राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 18 अगस्त, 2020 / 27 श्रावण, 1942

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, 23*rd january*, 2020

No. Shram(A) 6-2/2020 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947 the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr.No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	366/16	Rajdeen	D.F.O. Chamba	02-01-2020
2.	591/16	Surjeet Kumar	E.E. HPPWD Ghumarwin	04-01-2020
3.	96/19	Puran Chand	D.F.O. Wildlife, Chamba	07-01-2020
4.	05/19	Chaman Singh	D.F.O. Chamba	08-01-2020
5.	175/17	Jagdish Chand	D.F.O. Joginder Nagar	10-01-2020
6.	168/15	Kavita Devi	E.E. HPPWD/IPH Killar	14-01-2020
7.	572/15	Tek Chand	E.E. HPPWD Killar	14-01-2020
8.	456/16	Lobhi Ram	E.E. HPPWD Killar	14-01-2020
9.	305/15	Kapil Dev	E.E. HPPWD Killar	20-01-2020
10.	453/16	Prem Singh	E.E. HPPWD Killar	20-01-2020
11.	163/16	Sumitra	E.E. HPPWD Killar	21-01-2020
12	460/16	Beli Ram	E.E. HPPWD, Killar	23-01-2020
13.	529/16	Beli Ram	E.E. HPPWD Killar	23-01-2020
14.	35/14	Sumit Kumar	M.D. M/S Tigaksha Metallics Pvt. Ltd.	23-01-2020
15.	306/15	Narayan Singh	Manager H.P. State Handicrafts Chamba	23-01-2020
16.	53/17	Man Singh	E.E. I&PH/HPPWD Killar	23-01-2020

By order,

NISHA SINGH, IAS
Addl.Chief Secretary (Lab. & Emp.)

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 366/2016
Date of Institution : 27-5-2016
Date of Decision : 02-01-2020

Shri Rajdeen s/o Shri Noor Mohammad, r/o Village Saloh, P.O. Jassurgarh, Tehsil Churah, District Chamba, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Chamba Forest Division, Chamba, District Chamba, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

> "Whether time to time termination of the service of Shri Rajdeen s/o Shri Noor Mohammad, r/o Village Saloh, P.O. Jassurgarh, Tehsil Churah, District Chamba, H.P. during February, 2001 to August, 2014 by the Divisional Forest Officer, Chamba, Forest Division, Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as daily waged beldar/Forest worker/Fire watcher/casual labourer on muster roll basis by the respondent in the month of January, 2001 with intermittent breaks. Artificial/fictional breaks were given to him by the respondent from time to time so that he could not complete 240 days of continuous service in each calendar year. He was, thus, deprived of the benefit of regularization. Workers junior to him, being the favourite of the respondent, were retained and allowed to work for full month continuously. The provisions of the rule of seniority and the principle of 'last come first go' had been violated by the respondent. Fictional breaks are still being given to the petitioner. The respondent had not regularized the period of fictional/artificial breaks for the purpose of seniority and continuity, which was obligatory on its part as per Section 25-B (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). Various requests orally as well as in writing were made to the concerned authorities by the petitioner, but all in vain. The overall seniority list of all daily waged workmen working under the respondent/department had not been circulated to the workmen. Shri Gurdial and others were retained continuously, but no opportunity of re-employment was afforded to the petitioner. New/fresh hands have also been engaged. So, the respondent had also violated the provisions of Sections 25-G and 25-H of the Act. If the services of the petitioner had not been terminated illegally and had intermittent breaks been not given to him during his entire service period, he would have completed eight years of continuous service on 31-12-2008 and would have been entitled for regularization *w.e.f.* 1-1-2009. The act of the respondent is claimed to be malafide, arbitrary, unconstitutional, illegal, unjustified and against the principle of natural justice. It amounts to unfair labour practice. Hence, the petition.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petitioner were denied on merits. It is averred that the petitioner was engaged as a daily waged labourer by the respondent for seasonal works *w.e.f.* February, 2001 and that he had worked intermittently uptil August, 2014 on muster roll and bill basis. He thereafter had left the work of his own sweet will. It is specifically denied that the services of the petitioner were illegally terminated by the respondent. It was asserted that neither any breaks were given to him, nor he was terminated by the respondent. He had not completed 240 days in the preceding twelve calendar months and had not fulfilled the conditions of Section 25-B of the Act. So, there was no need to serve any notice under Section 25-F of the Act. The persons mentioned in the claim petition are not working with the respondent. No person junior to the petitioner had been retained in service by the respondent. The provisions of Sections

25-G and 25-H of the Act have also not been violated. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 12-6-2018:—

1. Whether time to time termination of services of the petitioner by the respondent during February, 2001 to August, 2014 is/was legal and justified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to ? . .*OPP.*

3. Wheather the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief:

6. Therefore, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Decided accordingly

Issue No.2 : Decided accordingly

Issue No.3 : Affirmative
Relief : Petition is dismissed as per the operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Rajdeen examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim which are exhibited as Ex. PW1/B & Ex. PW1/C and Mark-A to Mark-E.

In the cross-examination, he denied that there is seasonal work in the department. Self stated that the work is available throughout the year. He admitted that he was engaged in February, 2001 by the department. He denied that he had not worked continuously. He also denied that till August, 2014 he had worked intermittently on muster roll and bill basis. Volunteered that, these days he is working in the department. He denied that in the department

the work is done on its availability and budget. He admitted that a correct mandays of his work has been given by the department. He specifically denied that no fictional breaks had been given to him by the department. He clearly admitted that he had not completed 240 days in any year. He owns land, which he cultivates. He clearly denied that no worker junior to him had been kept and that the persons whose names have been mentioned in para No. 4 of the petition and in para No. 3 of his affidavit are not working in the department. He also denied that he had not been retrenched by the department. It was also denied by him that only those workers have been regularized, who as per the policy of the government had worked for more than 240 days.

11. Conversely, Shri Sanjeev Sharma, Divisional Forest Officer, Chamba (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was engaged by the department in February, 2001. He also admitted that as and when the work was being given by the department, the petitioner had been coming to work. He specifically denied that the petitioner was removed from work in September, 2014. Volunteered that, he himself had abandoned the work. He admitted that no notice was given to the petitioner when he had not reported on work after 2014. He also admitted that as per the record no retrenchment compensation had been given to the petitioner. He further admitted that the seniority of daily wagers is maintained at Divisional level. He specifically denied that the petitioner had worked for 240 days in each year. He admitted that Kailash Chand, Singhu, Viyas Dev and Paras Ram have been regularized in the department.

12. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

13. It is the admitted case of the parties that the services of the petitioner had been engaged as a daily waged beldar. The mandays chart Ex. RW1/B unfolds that the petitioner was initially employed in the month of February, 2001 by the respondent. Although, the petitioner has claimed that his services were engaged as a daily wager by the respondent in the month of January, 2001, but he has not placed on record any document in this regard. Then, the cross-examination of the petitioner reveals that he admitted his mandays chart to be correct. Admittedly, the petitioner is still serving the respondent/department. He as PW1 has self deposed that these days he is working in the department.

14. The mandays chart Ex. RW1/B clarifies that the month of initial engagement of the petitioner is February, 2001. The defence of the respondent is that the petitioner was engaged for seasonal works, as and when available with the respondent and subject to the availability of budget. However, the respondent has not placed on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and the work. Moreover, the mandays chart Ex.RW1/B reveals that in some years the petitioner had worked for more than 200 days with the respondent/department. In the year 2007, he served the respondent for 222 days. A person working for 222 days in a year cannot be termed as a seasonal worker. Even otherwise, it is nowhere the plea taken by the respondent nor there is any iota of evidence on record to show that the forest department had been declared as a seasonal factory, as required under the law.

15. The learned Authorized Representative for the petitioner argued that the work for 240 days in a year was not provided to his client by the respondent wrongly and illegally. The break period is required to be counted for the purpose of continuous service and his client is entitled to regularization after the in put of eight years of such service.

16. On the other hand, the learned Deputy District Attorney for the respondent urged that the work for 240 or more days in a year was provided to the petitioner by the respondent. The

petitioner, who was an intermittent worker, used to remain willfully absent from his duties because of which he could not complete 240 days of work. No intentional/fictional breaks were provided to the petitioner at any point of time, as alleged.

17. To my mind, the contention of the learned Deputy District Attorney for the respondent holds the force and is sustainable for the reasons discussed hereinafter Section 25-B of the Act postulates as under:—

18. *"25B. Definition of continuous service*-—For the purposes of this Chapter:—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks".

19. The above quoted Section enjoins a duty upon the respondent/employer to provide the work for atleast 240 days in a period of twelve calendar months to the workman for the

purpose of continuous service. This means that an employer can regulate the working of an employee as per his needs but keeping in mind the spirit of Section 25-B of the Act, an employer/respondent is duly bound to provide the work for 240 days in a period of twelve calendar months to the employee/petitioner. In **Digwadih Colliery** vs**. Workmen, AIR 1966 SC 75,** it has been held that "service for 240 days in a period of twelve calendar months is equal not only to service for a year but is to be deemed continuous service even if interrupted". The fiction of law converts service of 240 days in a period of twelve calendar months into continuous service for one complete year.

20. Be it stated that in computing the continuous service, notional breaks of service cannot be ignored. Regularization of the services of an employee will depend upon his fulfilling the criteria as laid down by the policies of the State from time to time.

21. Now comes the all important question as to whether artificial breaks were provided by the respondent to the petitioner as alleged or not?

To my thinking, the answer to this query is in the negative. The mandays chart Ex. RW1/B highlights that that the petitioner did not work for the days for which the muster rolls were issued in his name by the respondent. Some times he worked for less than fifteen days despite the fact that the muster roll for the entire month was issued in his favour. He (petitioner) cannot be allowed to take advantage of his own wrongs. Then, if intentional breaks in service were being provided to the petitioner by the respondent time and again as alleged, why he (petitioner) did not agitate the said fact earlier or at the time of the receipt of the payments for the working days actually put in by him? Ex. RW1/B unfolds that from the year 2001 to 2014, the petitioner worked under the respondent on muster rolls as well as bill basis. A person working for less than 100 days in a whole year cannot be permitted to countenance that artificial/fictional breaks were provided to him by the respondent/department wrongly and illegally. The fact that the petitioner had remained tight lipped and complacent about his rights for many years and had been receiving the payments without any protests speaks volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is nocuous of his own cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his (petitioner's) rescue taking into consideration the facts narrated above. To my mind, a false plea of intentional breaks has been put forth by the petitioner. No artificial/fictional breaks were given to the petitioner by the respondent during the course of his employment.

22. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner by the respondent. He is not entitled to any relief.

23. These issues are decided against the petitioner and in favour of his opponent.

Issue No.3 :

24. Taking into account my findings on issues No.1 and 2 above, it is held that the instant claim petition is not maintainable in the present form.

25. This issue is also decided in favour of the respondent and against the petitioner.

Relief :

26. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no

order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of January, 2020.

Sd/-
YOGESH JASWAL
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM**-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 591/2016

Date of Institution : 24-8-2016

Date of Decision : 04-01-2020

Shri Surjeet Kumar s/o Shri Mahant Ram, r/o Village Barota (Kudhi), P.O. Barota, Tehsil Ghumarwin, District Bilaspur, H.P. . .*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Ghumarwin, District Bilaspur, H.P.
..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. S.K. Lakha, ADA

Award :

The below given reference has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Shri Surjeet Kumar s/o Shri Mahant Ram, r/o Village Barota (Kudhi), P.O. Barota, Tehsil Ghumarwin, District Bilaspur, H.P. during year, 1998 by the Executive Engineer, H.P.P.W.D. Division, Ghumarwin, District Bilaspur, H.P., who had worked on daily wages beldar and has raised his industrial dispute after 11 years vide demand notice dated 30-12-2009, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as a daily waged beldar by the respondent in the year 1997. He had worked for 31 days

in the year 1997 and for 55 days in the year 1998. Thereafter his services were terminated by the respondent in the end of year 1998 without serving any notice and paying retrenchment compensation. Several requests for his re-engagement had been made by the petitioner, but without success. In the years 1999 and 2007 the respondent had engaged new/fresh hands, namely, S/Shri Jitender Singh, Chain Singh, Om Prakash, Jodh Singh, Data Ram and Pawan Kumar. The name of the petitioner is mentioned at serial No. 212 in the seniority list. The respondent had engaged about 100 junior workers to the petitioner, namely, Sh./Smt. Savitri, Kaish Mohammad, Jodh Singh, Raghunath, Jitender Singh, Beli Ram, Om Prakash, Data Ram, Lachhman, Thakur Dass, Pawan Kumar, Balbir Dass and Chain Singh and that a large number of workers have been regularized. Verbal and written representations were made by the petitioner to the respondent in the years 1999, 2001, 2003, 2004, 2007 and 2008 and respectively, but of no avail. The respondent has violated the provisions of Sections 25-B, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). It amounts to unfair labour practice. The respondent had illegally terminated the services of the petitioner, so that as per the legal provisions of Act, he is entitled for re-engagement. He is unemployed. Hence, the petition.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petitioner were denied on merits. It is asserted that the petitioner was engaged as a beldar (unskilled labourer) under the scheme of Employment Assurance Scheme only for 100 days. The petitioner had worked for 31 days in the year 1997 and for 55 days in the year 1998. Thereafter he had abandoned the job. He had never been disengaged by the respondent, as alleged. No juniors to him were engaged by the department. The seniority list of 572 daily waged workers has been maintained at the Divisional level in Ghumarwin Division. Persons whose names have been mentioned in the petition, except for Smt. Savitri, Pawan Kumar, Balbir and Jodh Singh, have been engaged as per the orders of the Hon'ble Himachal Pradesh Administrative Tribunal as well as the order orders of the Labour Court. Shri Pawan Kumar and Shri Balbir were engaged on compassionate grounds as per the policy of the Government. Shri Jodh Singh came on transfer from HPPWD Division No.1 Bilaspur to Ghumarwin Division and that Smt. Savitri was engaged as a part-time Sweeper in the year 2000. No representations had ever been made by the petitioner in the years 1999, 2001, 2003, 2004, 2007 and 2008. The petitioner has raised the demand notice in the month of December, 2009 *i.e*. after about eleven years, without any explanation. The petitioner was engaged under the scheme for seasonal agricultural works. He is not entitled to any protection under the Act. He has not completed 240 days in any of the years and has not fulfilled the conditions of the provisions of Section 25-B of the Act. The respondent has not violated the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner is gainfully employed as an agriculturist. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 21-6-2018:—

1. Whether termination of services of the petitioner by respondents during year, 1998 is/was legal and justified as alleged? . . *OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition is bad on account of delay and latches on the part of petitioner as alleged? . . *OPR.*

Relief:

5. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

6. Arguments of the learned Authorized Representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Decided accordingly.
Issue No. 2	:	Lump sum compensation of ₹20,000/-
Issue No. 3	:	Not pressed
Issue No. 4	:	Negative
Relief	:	Petition is partly allowed awarding lump sum compensation of ₹20,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Surjeet Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim which are exhibited as Ex. PW1/B & Ex. PW1/C.

In the cross-examination, he feigned ignorance that in the year 1997 the Government of India under the Employment Assurance Scheme had provided work for 100 days in 1752 blocks throughout the country. He was not aware that such scheme had also been implemented in Ghumarwin block of District Bilaspur. He admitted that he resides in Ghumarwin block. He denied that he along-with 571 other workers had worked under the scheme and that their names are mentioned in Ex.PW1/B. He admitted that his name figures at serial No. 212 of Ex.PW1/B. He denied that all the 572 workers engaged under the scheme had not been kept at work after the years 1998-1999. Volunteered that, 93 workers junior to him are still working. He admitted that the names of persons mentioned by him in the petition as well as his affidavit were engaged as per the orders of the Court, except for Savitri, Pawan, Balbir and Jodh Singh. He denied that Pawan Kumar and Balbir had been kept on compassionate ground, while Savitri was

working as a part-time Sweeper. He also denied that Jodh Singh had been transferred from HPPWD Division No.1 Bilaspur to Division Ghumarwin in the year 2004. He denied that he had never been disengaged nor given any breaks. He also denied that in the month of March, 1998 he had left the job of his own. He further denied that from March, 1998 uptil December, 2009 he had not approached the department for his re-engagement. Self stated that he had given in writing for his re-employment to the department in the years 1999, 2001, 2003, 2004, 2007 and 2008. He specifically denied that no such correspondence had been made by him with the department. He admitted that he cannot produce any record regarding such correspondence.

11. Conversely, Shri Manohar Lal Sharma, Executive Engineer (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner had worked for 85 days in the years 1997-1998. Volunteered that, thereafter the petitioner had never reported back on work. He admitted that no show cause notice had been issued to the petitioner as per the record for his not attending the work. He admitted that the petitioner had worked in the department as a daily waged beldar. He also admitted that seniority list Ex.PW1/B has been issued by the department. He further admitted that the name of the petitioner figures in it at serial No. 212. He was not aware that persons junior to the petitioner were still working. Volunteered that, if any such workers was there, he must have been kept as per the orders of the Court or on compassionate grounds. He specifically admitted that when such workers had been kept at work as per the orders of the Court, no notice, as per the record had been issued to the petitioner to come to work. He categorically denied that the petitioner had corresponded with the department for his re-employment in the years 2001, 2003, 2004, 2007 and 2008.

12. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

13. Ex. RW1/C is the copy of order dated 23-2-2006 pertaining to Shri Sita Ram and others.

14. Ex. RW1/D is the copy of office order dated 2-3-2009 relating to Shri Balbir Singh and Smt. Kesari Devi.

15. Ex. RW1/E is the copy of office order dated 18-8-2005 regarding sanction for engagement of part-time sweeper.

16. Ex. RW1/F is the copy of office order dated 10-10-2005 regarding sanction for engagement of part-time sweeper.

17. Ex. RW1/G1 and Ex. RW1/G2 are the copies of letters dated 24-10-2007 and 4-2-2008 regarding sanction of Part-Time Sweeper.

18. Ex. RW1/H is the copy of outlines and objectives of the Employment Assurance Scheme.

19. It is an admitted fact of the parties that the services of the petitioner were engaged as a daily waged beldar. But, the defence of the respondent is that the petitioner was engaged as a daily waged beldar only for 100 days under the Employment Assurance Scheme of the Government. However, except for placing on record the outlines and objectives of such scheme as Ex. RW1/H, the respondent has not placed on the file any document evidencing that the petitioner was

employed only for 100 days under such scheme. Much reliance was placed on the copy of seniority list Ex.PW1/B by the learned Assistant District Attorney to demonstrate that this document, which also reflects the name of the petitioner, proves such defence of the respondent. This cannot be accepted for the reasons that this seniority list itself shows that most of the workers, whose names find mentioned therein, had worked for more than 100 days in the years 1997 and 1998. Had it been that the workers were being engaged by the department only for 100 days under the aforesaid scheme, all the workers would not have been allowed to work beyond 100 days from the dates of their employment. I am, therefore, not disposed to accept the said claim of the respondent.

20. The next point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that his services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after March, 1998 the petitioner had left the work of his own.

21. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Manohar Lal Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

22. Then, it was contended by the learned Assistant District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of he Act. The case of the petitioner is that as no one month's notice in writing had been given to him by the department, nor he had been paid the retrenchment compensation, the purported order of retrenchment is illegal, because the conditions precedent as contained in Section 25-F of the Act were not complied with.

23. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty** vs. **Assistant Executive Engineer, (2006) 1 SCC 106,** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

24. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the reference and also as per the statement of claim the services of

the petitioner were allegedly terminated during the year 1998. Looking to the mandays chart Ex.RW1/B, it is evident that in a block of twelve calendar months anterior to the aforesaid year of his alleged termination, the petitioner had not worked continuously for a period of 240 days. Since December, 1997 uptil February, 1998, the petitioner had only worked for 86 days. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali** vs**. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

25. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:—

> *"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

26. Ex. PW1/B *i.e.* the seniority list of beldar category relating to Shri Vijay Kumar and five hundred seventy one others, reveals that the name of the petitioner figures at serial No. 212 of the said list. This seniority list produced by the respondent, which is not in dispute, discloses that the workers figuring at serial Nos. 215, 216, 223, 228, 230, 234, 240, 248, 251, 256, 277, 353, 354, 361, 363, 477, 482, 530 and 543 to 549 of the list had also worked with the department in the year 1999. The petitioner in his statement as PW1 maintained that about 100 workers junior to him were retained in service by the department. Although, it has been admitted by the petitioner that all the workers named by him in the petition as well as his affidavit, except for Savitri, Pawan Kumar, Balbir and Jodh Singh were re-engaged as per the orders of the Court, but that would not defeat the claim of the petitioner that the persons mentioned from serial number 213 onwards uptil 572 of the list were junior to him. This indicates that certain persons junior to the petitioner were undeniably retained in service, at the time his (petitioner's) services were dispensed with. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

27. Since, the provisions of Section 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 240 days in a block of twelve calendar months preceding termination to derive benefit under this Section of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as **State of Himachal Pradesh & Anr.** *Vs.* **Shri Partap Singh, 2017 (1) Him L.R. 286.**

28. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Section 25-G of the Act.

29. However, the petitioner's allegation that the respondent had violated the provisions of Section 25-H of the Act as well, to my mind, does not appear to have been substantiated. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had

offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case.

30. Faced with the situation, the learned Assistant District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh** vs. **Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

31. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram** vs**. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

32. In case titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited** vs**. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another** vs. **Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)** , it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr.** vs. **Raj Kumar, 2019 (160) FLR 791,** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 86 days as a non-skilled worker. His services, as per the reference were

disengaged in the year 1998 and he had raised the industrial dispute by issuance of demand notice after about **eleven years** *i.e.* demand notice was given on 30-12-2009. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

33. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹ 20,000/- (Rupees twenty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue 4 is answered in the negative and decided against the respondent.

Issue No. 3 :

3 4 . Not pressed.

Relief :

35. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹20,000/- (Rupees twenty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of January, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT CHAMBA)**

Ref No. : 96/2019
Date of Institution : 29.8.2019
Date of Decision : 07.01.2020

Shri Puran Chand s/o Shri Hoshiyara Ram, r/o Village Kuthel, P.O. Tundha, Tehsil Bharmour, District Chamba, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Wildlife Division, Chamba, District Chamba, H.P.
. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

Award :

The reference given below has been received from the appropriate Government for adjudication:-

> "Whether termination of services of Shri Puran Chand S/O Shri Hoshiyara Ram, R/O Village Kuthel, P.O. Tundha, Tehsil Bharmour, District Chamba, H.P. during May, 2018 by the Divisional Forest Officer, Wildlife Division, Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 and retaining juniors (as alleged by workman), is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex-parte.*

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

> "(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

> "10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party."

5. Rule 22 reads thus:-

> "Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

6. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

> "Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.- If without sufficient cause being shown, any party to the

proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex-parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services during May, 2018 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of January, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT CHAMBA)**

Ref No. : 05/2019

Date of Institution : 4-1-2019

Date of Decision : 08-01-2020

Shri Chaman Singh s/o Shri Jaffo, r/o Village Kuthar, P.O. Khundel, Tehsil and District Chamba, H.P. . . *Petitioner.*

Versus

The Divisional Forest Officer, Chamba, District Chamba, , H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner	:	None for the petitioner
For the Respondent	:	Sh. Soham Kaushal, Dy. D.A.

Award :

The reference given below has been received from the appropriate Government for adjudication :—

> "Whether the alleged termination of daily wages services of Shri Chaman Singh s/o Shri Jaffo, r/o Village Kuthar, P.O. Khundel, Tehsil and District Chamba, H.P. from time to time during year, 2013 to 2018 & finally terminated by the Divisional Forest Officer, Chamba, District Chamba, H.P. during the year, 2018, as alleged by the workman, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?"

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex-parte.*

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:-

> "(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:-

> "10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party."

5. Rule 22 reads thus:-

> "Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or

Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

6. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:-

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services from time to time during the year, 2013 to 2018 and finally during the year 2018 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits, regularization and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of January, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 175/2017

Date of Institution : 08-8-2017

Date of Decision : 10-01-2020

Shri Jagdish Chand s/o Shri Tek Chand, r/o Village Gallu Maluri, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P.
. . *Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajat Chaudhary, Adv. Vice

For the Respondent : Sh. L.M. Sharma, Dy. D.A.

Award :

The below given reference has been received from the appropriate Government for adjudication:—

> "Whether the termination of services of Shri Jagdish Chand S/O Shri Tek Chand, R/O Village Gallu Maluri, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during May, 2012 to June, 2015 and finally terminated during July, 2015 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?"

2. The case of the petitioner as set out in the statement of claim is that his services were engaged by the respondent on daily waged basis in the year 2000. He had worked under the supervision of Forest Range Officer, Joginder Nagar uptil the year 2015. The latter used to disengage his services without any written order so that he could not complete more than 240 days during the aforesaid period for the purposes of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The services of the petitioner had been finally terminated by the respondent in the year 2015. Fictional breaks from time to time were given by the respondent from the year 2000 uptil the year 2015. It is also asserted that while terminating the services of the petitioner in the year 2015 the respondent had not followed the principle of 'last come first go', as persons junior to him, namely, S/Sh./Smt. Nirmla Devi, Shyam Singh, and Sheela Devi were retained in service without any breaks and all these workers are still working with the respondent/department. No muster roll, casual card and wages slip had ever been provided to the petitioner by the respondent. He had raised a demand notice on 22-09-2015 against the respondent. Its copy stood forwarded to the Labour-Inspector-cum-Conciliation Officer, Joginder Nagar. Demand notice was responded to by the respondent, wherein it was denied that the petitioner was engaged in the year 2000 and had worked uptil the

year 2015. At the time of termination of his services, the petitioner had completed more than 240 days. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petition were denied on merits. However, it was asserted that the petitioner was engaged in the department during May, 2012 on bill basis and for seasonal forestry works, as per the availability of work and funds. The works carried out by the forest department include plantation, fire protection and soil moisture conservation works, which all are seasonal and site specific. Depending upon the need, the department employs labour on the basis of seasonal requirement for its labour works. The demand of such labour is always fluctuating, depending upon the workload etc. It also depends upon the financial allocation to the works, to be carried out in a year. For each and every work, norms are specified. The daily waged workers are not engaged against any regular vacancy and there is no post of casual labourer in the forest department. Since, the department is not a Work Charged Establishment and the daily wagers are not engaged against regular establishment, so there is not regular budget provision for their wages in the annual budget of the department. The wages are paid out of the funds earmarked for the work, for which they are engaged. Since, there is not much work with the department, the labourers are engaged on daily or on monthly basis only. The petitioner worked intermittently, as per the availability of work and funds on seasonal forestry works on bill basis from May, 2012 and had never worked on daily waged basis. The respondent/department never terminated the services of the petitioner. He had not completed 240 days in the preceding twelve calendar months to fulfill the conditions of Section 25-B of the Act. So, there is no violation of Section 25-F of the Act. Work is provided to the seasonal/casual workers as per its availability and funds. The respondent had followed the principle of 'last come first go' strictly and no fresh hands had been engaged. Smt. Nirmla Devi was engaged during the month of November, 1998 under the policy of compassionate appointment in Dharampur Range after approval of the competent authority as well as orders of the Hon'ble H.P. State Administrative Tribunal. Smt. Sheela Devi was engaged as a part-time worker w.e.f. July, 1998. She was made a whole time worker on 26-11-2009 and is working as a daily wager with the respondent/department. The services of Shri Shyam Singh were engaged as a contingent paid worker under died in harness policy after the death of his father. The petitioner had hired seasonal forestry works from the department intermittently on bill basis initially during May, 2012 and thereafter had hired the works periodically during some months/years uptil March, 2018. He had been engaged on bill voucher basis as per the directions of the Additional Chief Secretary (Forests) to the Government of H.P. *vide* Notification No. FFE-B-C(1)-35/2009 dated 28-04-2009. No junior to the petitioner had been engaged by the respondent. The petitioner is gainfully employed, being an agriculturist. Hence, it was prayed that the petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 12.9.2018:—

1. Whether time to time termination of service of the petitioner by the respondent during May, 2012 to June, 2015 is/was legal and justified as alleged? . . *OPP.*

2. Whether final termination of service of petitioner by the respondent during July, 2015 is/was legal and justified? . .*OPP.*

3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Decided accordingly
Issue No.2	:	Decided accordingly
Issue No.3	:	Negative
Issue No.4	:	Yes
Relief.	:	Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 To 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Jagdish Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim which are exhibited as Ex. PW1/B to Ex.PW1/D.

In the cross-examination, he denied that he had worked in the department from the month of May, 2012 uptil the month of March, 2018 intermittently. He also denied that no breaks had been given by the department. Further, he denied that he had not worked in the department from the year 2000 upto the month of April, 2012. He specifically denied that he had left the work of his own after the month of March, 2018. He admitted that he had worked after the month of July, 2015 with the department. He denied that there is seasonal work in the department. Self stated that work is available throughout the year. He admitted that he had not completed 240 days in any year. He owns land, which he cultivates. He denied that he had worked on bill basis in the department. He also denied that the department had not engaged any junior. He feigned ignorance that Smt. Sheela Devi was kept at work as a part-time in the month of July, 1998. He admitted that Shri Love Kumar was appointed as per the orders of the Court. He also admitted that Shri Shyam Singh and Smt. Nirmla Devi were appointed on compassionate grounds. He denied that he is making a phoney statement.

11. Conversely, Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of

the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, He denied that the petitioner was engaged in the year 2000. Volunteered that, as per the record the petitioner was kept at work in May, 2012. He also admitted that at the time of engagement of the petitioner, no appointment letter was issued. Further, he admitted that during the period of service of the petitioner, no attendance or casual card was issued. Volunteered that, he was kept at work being of seasonal nature. He further admitted that no notification has been issued regarding the status of Forest Department as a seasonal industry. He denied that the respondent had intentionally given fictional breaks to the petitioner. He admitted that no notice had been issued for temporary work by the department. At present 27 forest workers are posted in Joginder Nagar Forest Division. He feigned ignorance that Smt. Nirmla Devi was kept at work in the year 1998. He admitted that as per Ex. RW1/D Shri Shyam Singh was engaged as a daily waged beldar. He specifically admitted that as per the Court order Shri Love Kumar has been given the seniority and continuity in service without back wages and that his services have been regularized in the month of September, 2007. He denied that Shri Shyam Singh is junior to the petitioner. Self stated that he was appointed as a daily wager on compassionate grounds and is working with the department. He admitted that no notice had been given to the petitioner to report for duty nor any departmental inquiry had been initiated against him. He was categorical that there was no agreement with the petitioner that he had been kept at work on bill basis. Volunteered that, as per the notification of the government, he was kept at work on bill basis. He further admitted that Smt. Nirmla Devi figuring at serial No.1 in Ex. PW1/C is working since the year 2000 and that she has been regularized.

12. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

13. Ex. RW1/C is the copy of letter dated 19-12-2009 regarding policy to regulate the services of part time workers from Principal CCF, H.P.

14. Ex. RW1/D is the copy of order dated 9-7-2003 passed in OA (M) No. 20/2000 by the Hon'ble H.P. Administrative Tribunal, Shimla.

15. Ex. RW1/E is the copy of letter dated 27-09-2008 regarding appointment of sons, daughters/real relatives of Government servants died in harness-providing employment thereof.

16. Ex. RW1/F is the copy of letter dated 14-05-1995 relating to Smt. Nirmla Devi w/o late Sh. Roop Lal, Daily Wager.

17. It is the admitted case of the parties that the petitioner had worked in the department. From the mandays chart Ex. RW1/B, it can be gathered that the petitioner had initially worked with the department in the month of May, 2012. Although, the petitioner claimed that his services were engaged on daily waged basis by the respondent in the year 2000 and that he had worked as such uptil the year 2015, but he has not placed or exhibited on record any document in this regard. The respondent (RW1) in his examination-in-chief stated that the petitioner was employed as a causal labourer but, however, he has not placed and exhibited on record any document evidencing that the services of the petitioner were engaged as a casual/seasonal labourer for carrying out the seasonal works only to his (petitioner's) knowledge.

18. The version of the petitioner is that from the year of his initial engagement to the year 2015, artificial/fictional breaks in service were provided to him by the respondent. His services were wrongly and illegally terminated by the respondent in the year 2015.

19. While denying the said facts, the respondent has pleaded that the petitioner was only a casual/seasonal worker, who used to work intermittently as per his sweet will and convenience. No intentional breaks in service were provided to the petitioner at any point of time. Since the year 2012, the petitioner had been hiring the work from the respondent/department on bill basis and had been receiving the payments for the execution of the works. He is still working with the respondent on bill basis. His services were never finally terminated as alleged.

20. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent as alleged?

21. Ex. RW1/B is the mandays chart relating to the petitioner. Its perusal discloses that the petitioner had worked under the respondent from the month of May, 2012 to March, 2018. The petitioner (PW1) admitted in his cross-examination that he had never worked for 240 days in any year.

22. If intentional breaks in service were being provided to the petitioner by the respondent time and again as alleged, then why he (petitioner) did not agitate the said fact earlier or at the time of the receipt of the payments for the working days actually put in by him? Ex.RW1/B unfolds that the petitioner had worked for the respondent on bill basis for the months of May, June, and August, 2012; April, May, September, October and November, 2013; January, February, March, April, June to September, November and December, 2014; January to June, August and November, 2015; February, May to July, November and December, 2016; August, 2017 and March, 2018. A person not working for a single day or for less than 100 days in the whole year cannot be permitted to countenance that artificial/fictional breaks were provided to him by the respondent/department wrongly and illegally. The fact that the petitioner had remained tight lipped and complacent about his rights for about two years and had been receiving the payments without any protests speaks volumes about the truthfulness and veracity of his claim. To my mind, a false plea of intentional breaks has been put forth by the petitioner so as to derive the benefits of regular employee with a malafide intention and ulterior motive. No artificial/fictional breaks were given to the petitioner by the respondent during the course of his employment.

23. Now coming to the question as to whether in the month of July, 2015, the services of the petitioner were finally terminated by the respondent (as per the reference) or not?

24. The version of the petitioner is that he had worked with the respondent/department uptil the year 2015. In the June, 2015 his services were terminated by the respondent wrongly and illegally. It is not the case of the petitioner that the mandays chart Ex. RW1/B produced by the respondent is incorrect. Rather, he while under cross-examination was categorical that even after the year 2015 he had worked in the department. The mandays chart reveals that the petitioner had worked for the months of January to June, August, and November, 2015. After that, he had worked for the months of February, May to July, November and December, 2016, for the month of August, 2017 and for the month of March, 2018 under the respondent. Since, the petitioner had served the respondent after July, 2015, as he had worked in the months of August and November, 2015, February, May to July, November and December, 2016, August, 2017 and March, 2018 with the department, I am at a loss to understand as to how it lies in his mouth to say that his services were disengaged by the respondent in July, 2015 in a wrongful manner. From the statement made by the petitioner (PW1), it can be gathered that even after the year 2015 he had worked with the respondent. The said fact finds support from the mandays chart, Ex. RW1/B. In view of these facts, it can easily be said that the petitioner is not speaking the truth. His services were never finally terminated by the respondent in the month of July, 2015, as alleged.

As no retrenchment order was passed by the respondent in the month of June, 2015, it cannot be said that the termination/retrenchment order is illegal and unjustified.

25. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner and that his services were not finally terminated by the respondent during July, 2015. He is not entitled to any relief.

26. Issues no.1 and 2 are decided accordingly, while issue no.3 is answered in the negative and decided against the petitioner.

Issue No. 4 :

27. Taking into account my findings on issues no. 1 to 3 above, it is held that the instant claim petition is not maintainable in the present form.

28. This issue is answered in the affirmative and in favour of the respondent.

Relief :

29. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of January, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 168/2015

Date of Institution : 11.4.2015

Date of Decision : 14.01.2020

Smt. Kavita Devi w/o Shri Chota Ram, r/o Village and Post Office Ghisal, Tehsil Pangi, District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D./I.P.H. Killar, Tehsil Pangi, District Chamba, H.P. ...*Respondent.*

Reference under Section 10 (1) of the IndustrialDisputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Soham Kaushal, DDA

Award :

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Smt. Kavita Devi w/o Shri Chota Ram, r/o Village and Post Office Ghisal, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D./ I.P.H. Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 03-04-2012 regarding her alleged illegal termination of service during year, 2005 suffers from delay and laches. If not, Whether termination of the services of Smt. Kavita Devi w/o Shri Chota Ram, r/o Village and Post Office Ghisal, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D./ I.P.H. Killar, Tehsil Pangi, District Chamba, H.P. during year, 2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2 . The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis in the month of May, 1994. She had worked uptil October, 2005 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The respondent had unlawfully terminated the services of the petitioner. She had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of 'first come last go'. The names of the juniors who were retained in service by the respondent are Shri Hukkam Chand and twenty six others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but without success. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was never engaged by the respondent. Hence, it is prayed that the claim petition be dismissed.

[

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 17-05-2016:-

1. Whether the industrial dispute raised by petitioner vide demand notice dated 03-04-2012 qua her termination of service during year, 2005 by respondent suffers from

the vice of delay and laches as alleged. If so, its effect? . .*OPP.*

2. Whether termination of the services of petitioner by the respondent during year, 2005 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged?. . *OPR.*

Relief :

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.	1	: Negative
Issue No.	2	: Partly affirmative
Issue No.	3	: Lump sum compensation of 10,000/-
Issue No.	4	: Negative

Relief :

Petition is partly allowed awarding lump sum compensation of 10,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Kavita Devi examined hermself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed certain documents purportedly in support of her claim which are exhibited as Ex. PW1/B to Ex. PW1/L and Mark-PA to Mark-PE.

In the cross-examination, she denied that she had not worked as a beldar in the department from the year 1994 uptil the year 2005. She also denied that she had not worked for 160 days in any of the years to fulfill the criteria of tribal area. She admitted that she earns her livelihood by doing agricultural works. She denied that as she had left the work of her own, she

was not entitled to any compensation or re-engagement in service. She further denied that no junior to her had been kept at work by the department. She admitted that she does the days drudgery privately. Self stated as and when the work is available. She denied that the principle of 'last come first go' has been followed in her case. She denied that she is making a phoney statement.

11. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that no notice had been served upon the petitioner to report back on duty. He admitted that the petitioner had neither been charge-sheeted,

nor recalled on work. Volunteered that, she had left the job of her own. He admitted that Ex.PW1/B to Ex. PW1/N were issued by their department. He also clearly admitted that all the juniors who had worked continuously have been regularized. Self stated that they were regularized as per the orders of the Court.

12. Ex. RW1/B is the mandays chart relating to the workers who had worked in Division H.P.P.W.D. Killar (Pangi).

13. The first question which arises for consideration is whether the petitioner was an employee of the respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd**. vs. **State of Tamil Nadu, (2004) 3 SCC 514,** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

14. In the case on hand, it was asserted by the petitioner that she was a workman of the respondent. Respondent denied this fact and claimed that the petitioner had never been engaged by the department. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between herself and the respondent. Document, Mark-PB *i.e.* mandays chart has been placed on record by the petitioner to show that she was an employee of the respondent. It shows that the petitioner had initially been engaged by the respondent/department in September, 2003 and that she had intermittently worked uptil August, 2004. The petitioner (PW1) stated in her substantive evidence that she was engaged by the respondent/department as a daily waged beldar in the year 1994 and that she had worked as such uptil October, 2005. Then, strangely enough it was suggested to the petitioner by the respondent that as she had herself abandoned the job, she was not entitled to re-engagement or any compensation. The petitioner denied this suggestion. Anyhow, the putting of this suggestion by the respondent to the petitioner leaves no doubt in mind that the respondent admits the petitioner to have worked with the department. Documents Mark-PC to Mark-PE *i.e.* copies of muster rolls also show that the petitioner had worked in the department for 37 days in the

years 2003 and 2004. The statement of Shri B.K. Kapil, (RW1) alleging that the petitioner had never been engaged by the department is belied by the aforesaid ocular and documentary

evidence led on record by the petitioner. Thus, the plea put forth by the respondent that the petitioner had never been engaged by the department is not established.

15. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

16. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In **R.M. Yellatty** vs. **Assistant Executive Engineer, (2006) 1 SCC 106,** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

17. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the reference took place in the year 2005. From the mandays chart Mark-PB placed on the file, it becomes clear that the petitioner had not completed 160 days of continuous work in a block of twelve calendar months preceding the date/month of her retrenchment, i.e. year 2005 as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali** vs. **State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

18. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

19. Ex.RW1/B, *i.e.* year-wise mandays detail of beldar category relating to Shri Hukkam Chand and twenty six others, reveals that Shri Sham Lal was appointed by the respondent in the year 2006, whereas the services of Shri Gautam Singh were engaged in the year 2007. Of course, as note has been given on Ex. RW1/B that both these men were appointed on compassionate grounds. The dates of deaths of their fathers, namely, S/Sh. Salak Ram and Gian Chand (as mentioned in mandays chart Ex. PW1/E) have not come on the file. Admittedly, Shri Sham Lal and Shri Gautam Singh are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The years of engagement of Shri Sham Lal and Shri Gautam Singh are 2006 and 2007 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per

Mark-PB is September, 2003. There is nothing on record to show that the deceased fathers of Shri Sham Lal and Shri Gautam Singh were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

20. Since, the provisions of Section 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 160 days in a block of twelve calendar months preceding termination to derive benefit under this Section of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as **State of Himachal Pradesh & Anr. Vs. Shri Partap Singh, 2017 (1) Him L.R. 286.**

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Section 25-G of the Act.

22. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for her self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

23. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh** vs. **Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram** vs. **State of H.P. and ors., 2012 (2) Him. L.R. (FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

25. In case titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'blem Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas

his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer** vs. **Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited** vs. **Bhurumal (2014) 7 SCC 177** and **District Development Officer & another** vs. **Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)** , it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr.** vs. **Raj Kumar, 2019 (160) FLR 791,** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 37 days as a non-skilled worker. Her services, as per the reference were disengaged in the year 2005 and she had raised the industrial dispute by issuance of demand notice after more than **seven years** *i.e.* demand notice was given on 3-4-2012. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation

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26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹10,000/- (Rupees ten thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No.1 is answered in the negative and decided against the respondent.

Issue No.4 :

27. Not pressed.

Relief :

28. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹10,000/- (Rupees ten thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of January, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 572/2015

Date of Institution : 04-12-2015

Date of Decision : 14-01-2020

Shri Tek Chand s/o Shri Harkha, r/o Village Banegi, P.O. Tarella, Tehsil Churah, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dharam Malhotra, Adv.

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

Award :

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Shri Tek Chand s/o Shri Harkha, r/o Village Banegi, P.O. Tarella, Tehsil Churah, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 05-05-2011 regarding his alleged illegal termination of service during September, 2004 suffers from delay and laches? If not, Whether termination of the Shri Tek Chand s/o Shri Harkha, r/o Village Banegi, P.O. Tarella, Tehsil Churah, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar *w.e.f.* August, 2001 by the respondent. He continuously

worked without breaks with the respondent. His services were orally terminated by the respondent on 1st October, 2004 without any notice or reason. Thereafter, the petitioner had made several requests to the respondent, but he was not re-engaged despite availability of work and funds. Persons junior to him have been allowed to continue as beldars. The respondent has completely ignored the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). He has worked for 160 days preceding twelve calendar months. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Act. The act and conduct of the respondent is illegal and unjustified. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on the ground of delay and laches. The contents of the petition are denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 2001 and he had worked as such till the year 2004. During this period he had worked intermittently with the department and thereafter had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent for re-engagement. No person junior to the petitioner had ever been engaged in his place. There has been no violation of any of the provisions of the Act by the respondent. It is admitted that a demand notice dated 05-05-2011 was served upon the respondent by the petitioner. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 12-6-2018 :

1. Whether the industrial dispute raised by petitioner vide demand notice dated 05-05-2011 *qua* his termination of service during Sept., 2004 by respondent suffers from the *vice* of delay and laches as alleged? . . *OPP.*

2. Whether termination of the services of petitioner by the respondent during Sept., 2004 is/was legal and justified as alleged? . . *OPP.*

3. If issue no. 1 or issue no.2 are proved in affirmative, to what service benefits petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

Relief :

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under :—

Issue No.1	:	Negative
Issue No. 2	:	Decided accordingly
Issue No. 3	:	Lump sum compensation of 25,000/-
Issue No. 4	:	Not pressed

Relief:

Petition is partly allowed awarding lump sum compensation of ₹25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 to 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Tek Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he denied that he had worked in the department from August, 2001 to September, 2004. Further, he denied that he had not worked for 160 days in any of the years to fulfill the criteria of tribal area. He specifically denied that after September, 2004, he had left the work of his own will and had never reported back for duty. He denied that no junior to him was kept by the department. He cultivates land. He admitted that he earns his livelihood by doing agricultural works. He also admitted that he does the days' drudgery privately. Self stated as and when the work is available. He denied that he is making a phoney statement.

11. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that no notice had been served upon the petitioner to report back on duty. He denied that the petitioner had continuously been working since the year 2001 and that he was orally terminated in the year 2004. He admitted that the petitioner had neither been charge-sheeted, nor he had been recalled to work. Volunteered that, he had left the job of his own. He clearly admitted that Shri Sham Lal and Shri Gautam Singh, who are junior to the petitioner are working in the department on compassionate grounds. He also clearly admitted that all the juniors who had worked continuously have been regularized. Self stated that they were regularized as per the orders of the Court.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the year-wise details of twenty seven workers, who had worked in the department.

14. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex.RW1/B produced by the

respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of August, 2001, by the respondent and that he had worked as such intermittently uptil September, 2004.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri B.K. Kapil, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In **R.M. Yellatty** vs. **Assistant Executive Engineer, (2006) 1 SCC 106,** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of September, 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/B that he had only worked for 29 days in the immediate preceding year of his dismissal, which is below the required 160 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali** vs. **State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20 The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides :—

> *"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

21. Ex. RW1/C *i.e.* the year-wise mandays chart of beldar category relating to Shri Hukkam Chand and twenty six others, reveals Smt. Ram Dei was appointed by the respondent in the year 2003, whereas the services of Shri Sham Lal and Shri Gautam Singh were engaged in the years 2006 and 2007 respectively. Of course, a note has been given on Ex. RW1/C that Smt. Ram Dei was engaged as per the orders of the Court/Tribunal, but that would not defeat the claim of the petitioner that she was junior to him. A note has also been given on Ex.RW1/C that S/Shri Sham Lal and Gautam Singh were appointed on compassionate grounds. But, however, the dates of deaths of their fathers have not come on the file. Shri B.K. Kapil (RW1) was categorical in his substantive evidence that both the above named workers were junior to the petitioner. Admittedly, both the above named persons and Smt. Ram Dei are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner, which as per Ex.RW1/B took place on August, 2001. Shri B.K. Kapil (RW1) clearly admitted in his cross-examination that all the junior workers who had continuously worked, have been regularized. There is nothing on record to show that the fathers of S/Shri Sham Lal and Gautam Singh were senior to the petitioner. It is also not made out from the record that the petitioner was junior to Smt. Ram Dei. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of engaging/re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

22. Since, the provisions of Section 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 160 days in a block of twelve calendar months preceding termination to derive benefit under this Section of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as **State of Himachal Pradesh & Anr.** Vs. **Shri Partap Singh, 2017 (1) Him L.R. 286.**

23. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Section 25-G of the Act.

24. However, the petitioner's allegation that the respondent had violated the provisions of Section 25-H of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit Ex.PW1/A, as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh hands were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

25. Faced with the situation, the learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the

redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh** vs. **Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

26. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram** vs. **State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

27. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC),** it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer** vs. **Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited** vs. **Bhurumal (2014) 7 SCC 177** and **District Development Officer & another** vs. **Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr.** vs. **Raj Kumar, 2019 (160) FLR 791,** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 367 days as a non-skilled worker. His services, as per the reference were disengaged in September, 2004 and he had raised the industrial dispute by issuance of demand notice after about **seven years** *i.e.* demand notice was given on 05-5-2011. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues No. 2 and 3 are decided accordingly, while issue no.1 is answered in the negative and decided against the respondent.

Issue No. 4 :

29. Not pressed.

Relief :

30. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of January, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 456/2016

Date of Institution : 20-8-2016

Date of Decision : 14-01-2020

Shri Lobhi Ram s/o Shri Narayan Singh, r/o Village Suella, P.O. Tarella, Tehsil Churah, District Chamba, H.P. ….*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Killar Division (Pangi), Tehsil Pangi, District Chamba, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dharam Malhotra, Adv.

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

Award :

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Shri Lobhi Ram, s/o Shri Narayan Singh, r/o Village Suilla, P.O. Tarella, Tehsil Churah, District Chamba, H.P., during year 2004 by the Executive Engineer, H.P.P.W.D. Killar Division, (Pangi) Tehsil Pangi, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute vide demand notice dated 24-05-2012 after lapse of more than 11 years. If not, keeping in view delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar w.e.f. May, 2001 by the respondent. He continuously worked without breaks uptil October, 2004 with the respondent. His services were orally terminated by the respondent without any notice or reason. Thereafter, the petitioner had made several requests to the respondent, but he was not re-engaged despite availability of work and funds. Persons junior to him have been allowed to continue as beldars. The respondent has completely ignored the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). He has worked for 160 days preceding twelve calendar months. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Act. The act and conduct of the respondent is illegal and unjustified. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on the ground of delay and laches. The contents of the petition are denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 2001 and had worked intermittently with the department and thereafter had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent for re-engagement. No person junior to the petitioner had ever been engaged in his place. There has been no violation of any of the provisions of the Act by the respondent. It is admitted that a demand notice dated 24-5-2015 was served upon the respondent by the petitioner. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 12-6-2018:

1. Whether termination of the services of the petitioner by the respondent during year 2004 is/was legal and justified as alleged? . . *OPP.*

2. If issue no. 1 is proved in affirmative, to what service benefits petitioner is entitled to? . . *OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition is bad on account of delay and latches as alleged? . . *OPR.*

Relief:

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Decided accordingly
Issue No. 2	:	Lump sum compensation of 12,000/-
Issue No. 3	:	Not pressed
Issue No. 4	:	Negative
Relief.	:	Petition is partly allowed awarding lump sum compensation of ₹12,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Lobhi Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he denied that he had worked in the department from July, 2001 to October, 2001. Volunteered that, he had worked from May, 2001 uptil October, 2004. He also denied that after May, 2001, August, 2001, November, 2001 to October,2004, he had not worked in the department. Further, he denied that he had not worked for 160 days in any of the years to fulfill the criteria of tribal area. He specifically denied that after October, 2001, he had left the work of his own sweet will and had never reported back for duty. He clearly admitted that no intentional leaves were ever granted to him by the department. He denied that no junior to him was kept by the department. He cultivates land. He admitted that he earns his livelihood by doing agricultural works. He also admitted that he does the days' drudgery privately. Self stated as and when the work is available. He denied that he is making a phoney statement.

11. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that no notice had been served upon the petitioner to report back on duty. He denied that the petitioner had continuously been working since the year 2001 and that he was orally terminated in the year 2004. He admitted that the petitioner had neither been charge-sheeted, nor recalled to work. Volunteered that, he had left the job of his own. He clearly admitted that Shri Sham Lal and Shri Gautam Singh, who are junior to the petitioner are working in the department on compassionate grounds. He also clearly admitted that all the juniors who had worked continuously have been regularized. Self stated that they were regularized as per the orders of the Court.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the year-wise details of twenty seven workers, who had worked in the department.

14. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in May, 2001 and had worked as such till October, 2004. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 2001 and he had worked as such uptil October, 2001. Although, the petitioner (PW1) in his cross- examination denied the fact that he had been engaged in the month of July, 2001 by the respondent and had worked only uptil October, 2001, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of July, 2001 for the first time as a daily waged beldar and that he had only worked as such uptil October, 2001. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the month of May, 2001 and that he had worked uptil October, 2004, as claimed.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri B.K. Kapil, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with

reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In **R.M. Yellatty** vs**. Assistant Executive Engineer, (2006) 1 SCC 106,** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/B that he had only worked for 50 days in the department, which is below the required 160 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali** vs. **State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

21. Ex. RW1/C i.e. the year-wise mandays chart of beldar category relating to Shri Hukkam Chand and twenty six others, reveals that Smt. Ram Dei was appointed by the respondent in the year 2003, whereas the services of Shri Sham Lal and Shri Gautam Singh were engaged in the years 2006 and 2007 respectively. Of course, a note has been given on Ex. RW1/C that Smt. Ram Dei was engaged as per the orders of the Court/Tribunal, but that would not defeat the claim of the petitioner that she was junior to him. A note has also been given on Ex.RW1/C that S/Shri Sham Lal and Gautam Singh were appointed on compassionate grounds. But, however, the dates of deaths of their fathers have not come on the file. Shri B.K. Kapil (RW1) was categorical in his substantive evidence that both the above named workers were junior to the petitioner. Admittedly, both the above named persons and Smt. Ram Dei are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner, which as per Ex.RW1/B took place in July, 2001. Shri B.K. Kapil (RW1) clearly admitted in his cross-examination that all the junior workers who had continuously worked, have been regularized. There is nothing on record to show that the fathers of S/Shri Sham Lal and Gautam Singh were senior to the petitioner. It is also not made out from the record that the petitioner was junior to Smt. Ram Dei. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the

principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of engaging/re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

22. Since, the provisions of Section 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 160 days in a block of twelve calendar months preceding termination to derive benefit under this Section of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as **State of Himachal Pradesh & Anr.** Vs. **Shri Partap Singh, 2017 (1) Him L.R. 286.**

23. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Section 25-G of the Act.

24. However, the petitioner's allegation that the respondent had violated the provisions of Section 25-H of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit Ex.PW1/A, as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh hands were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

25. Faced with the situation, the learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh** vs. **Sirhind Co-operative Marketing -**cum**-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

26. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram** vs. **State of H.P. and ors., 2012 (2) Him. L.R. (FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

27. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble

High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer*** *vs.* ***Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another** vs. **Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)** it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791,** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 50 days as a non-skilled worker. His services, as per the reference were disengaged in the year 2004 and he had raised the industrial dispute by issuance of demand notice after about **eleven years** *i.e.* demand notice was given on 24-5-2015. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `12,000/- (Rupees twelve thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues No. 1 and 2 are decided accordingly, while issue No. 4 is answered in the negative and decided against the respondent.

Issue No. 3

29. Not pressed.

Relief

30. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of `12,000/- (Rupees twelve thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of January, 2020.

Sd/-

(YOGESH JASWAL),

Presiding Judge,

Labour Court-cum-*Industrial*

Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 305/2015

Date of Institution : 16-7-2015

Date of Decision : 20-01-2020

Shri Kapil Dev s/o Shri Man Singh, r/o Village Ghissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. ....*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. ... *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Soham Kaushal, DDA

Award :

The reference given below has been received from the appropriate Government for adjudication :—

> "Whether the industrial dispute raised by the worker Shri Kapil Dev S/O Shri Man Singh, R/O Village Ghissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 08.07.2012 regarding his alleged illegal termination of service during November, 2005 suffers from delay and laches? If not, Whether termination of the services of Shri Kapil Dev S/O Shri Man Singh, R/O Village Ghissal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during November, 2005 without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis in the month of January, 2000. He had worked uptil November, 2005 with the respondent. Fictional breaks were given to him from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The respondent had unlawfully terminated the services of the petitioner. He had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of 'first come last go'. The names of the juniors who were retained in service by the respondent are Smt. Bhag Dei and ten others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. He

was not given an opportunity of re-employment. From the date of his disengagement, he was unemployed. He had approached the respondent time and again to re-engage him, but without success. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was never engaged by the respondent. Hence, it is prayed that the claim petition be dismissed.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 17-5-2016:-

1. Whether the industrial dispute raised by petitioner vide demand notice dated 08-07-2012 qua his termination of service during November, 2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . *OPP.*

2. Whether termination of the services of petitioner by the respondent during November, 2005 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue No.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? *OPR*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	:	Negative
Issue No.2	:	Partly affirmative
Issue No.3	:	Lump sum compensation of ₹25,000/-
Issue No.4	:	Not pressed
Relief.	:	Petition is partly allowed awarding lump sum compensation of ₹25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Kapil Dev examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim which are exhibited as Ex. PW1/B to Ex. PW1/E, Ex.PW1/Q1 to Ex.PW1/Q6 and Ex.PW1/S1 to Ex.PW1/S4.

In the cross-examination, he denied that he had not worked as a beldar in the department from the year 2000 uptil the year 2005. He also denied that he had not worked for 160 days in any of the years to fulfill the criteria of tribal area. He admitted that he earns his livelihood by doing agricultural works. He denied that as he had left the work of his own, he was not entitled to any compensation or re-engagement in service. He further denied that no junior to him had been kept at work by the department. He admitted that he does the days' drudgery privately. Self stated as and when the work is available. He denied that the principle of 'last come first go' has been followed in his case. He also denied that he is making a phoney statement.

11. Conversely, Shri B.K. Kapil, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that no notice had been served upon the petitioner to report back on duty. He also admitted that the petitioner had neither been charge- sheeted, nor recalled on work. Volunteered that, he had left the job of his own. He admitted that Ex.PW1/B to Ex.PW1/N were issued by their department. He also clearly admitted that all the juniors who had worked continuously have been regularized. Self stated that they were regularized as per the orders of the Court.

12. Ex. RW1/B is the mandays chart relating to the workers who had worked in Division HPPWD, Killar (Pangi).

13. The first question which arises for consideration is whether the petitioner was an employee of the respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd.** vs. **State of Tamil Nadu, (2004) 3 SCC 514,** it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

14. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent. Respondent denied this fact and claimed that the petitioner had never been engaged by the department. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. Ex.PW1/S1 to Ex.PW1/S4 and Ex.PW1/Q3 to Ex.PW1/Q6, the muster rolls, have been placed on record by the petitioner to show that he was an employee of the respondent. These muster rolls show that the petitioner had initially been engaged by the respondent/department in the month of

July, 2001 and that he had intermittently worked uptil October, 2004. The petitioner (PW1) stated in his substantive evidence that he was engaged by the respondent/department as a daily waged beldar in the year 2000 and that he had worked as such uptil the year 2005. Then, strangely enough it was suggested to the petitioner by the respondent that as he had himself abandoned the job, he was not entitled to re-engagement or any compensation. The petitioner denied this suggestion. Anyhow, the putting of this suggestion by the respondent to the petitioner leaves no doubt in mind that the respondent admits the petitioner to have worked with the department. Ex.PW1/S1 to Ex.PW1/S4 and Ex.PW1/Q3 to Ex.PW1/Q6 *i.e.* copies of muster rolls also show that the petitioner had worked in the department for a total period of 185 days in the years 2001, 2002 and 2004 respectively. The statement of Shri B.K. Kapil, (RW1) alleging that the petitioner had never been engaged by the department is belied by the aforesaid ocular and documentary evidence led on record by the petitioner. Thus, the plea put forth by the respondent that the petitioner had never been engaged by the department is not established.

15. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

16. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In **R.M. Yellatty** vs. **Assistant Executive Engineer, (2006) 1 SCC 106,** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

17. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2005. From the muster rolls i.e. Ex.PW1/S1 to Ex.PW1/S4 and Ex.PW1/Q3 to Ex.PW1/Q6 placed on the file, it becomes clear that the petitioner had not completed 160 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, i.e. the year 2005, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali** vs. **State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

18. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

19. Ex. RW1/B *i.e.* the year-wise mandays chart of beldar category relating to Shri Hukkam Chand and twenty six others, reveals that Smt. Ram Dei was appointed by the respondent in the year 2003, whereas the services of Shri Sham Lal and Shri Gautam Singh were engaged in the years 2006 and 2007 respectively. Of course, a note has been given on Ex. RW1/C that Smt. Ram Dei was engaged as per the orders of the Court/Tribunal, but that would not defeat the claim of the petitioner that she was junior to him. A note has also been given on Ex.RW1/C that S/Shri Sham Lal and Gautam Singh were appointed on compassionate grounds. But, however, the dates of deaths of their fathers have not come on the file. Shri B.K. Kapil (RW1) was categorical in his substantive evidence that both the above named workers were junior to the petitioner. Admittedly, both the above named persons and Smt. Ram Dei are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner, which as per Ex.PW1/S1 took place in July, 2001. Shri B.K. Kapil (RW1) clearly admitted in his cross-examination that all the junior workers who had continuously worked, have been regularized. There is nothing on record to show that the fathers of S/Shri Sham Lal and Gautam Singh were senior to the petitioner. It is also not made out from the record that the petitioner was junior to Smt. Ram Dei. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of engaging/re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

20. Since, the provisions of Section 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 160 days in a block of twelve calendar months preceding termination to derive benefit under this Section of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as **State of Himachal Pradesh & Anr.** Vs. **Shri Partap Singh, 2017 (1) Him L.R. 286.**

21. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Section 25-G of the Act.

22. However, the petitioner's allegation that the respondent had violated the provisions of Section 25-H of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit Ex.PW1/A, as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh hands were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

23. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing**-cum-**Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:—

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram** vs**. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

23. In case titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited** vs. **Bhurumal (2014) 7 SCC 177** and **District Development Officer & another** vs. **Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr.** vs. **Raj Kumar, 2019 (160) FLR 791,** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 185 days as a non-skilled worker. His services, as per the reference were disengaged in July, 2004 and he had raised the industrial dispute by issuance of demand notice after more than **seven years** *i.e.* demand notice was given on 08-7-2012. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of 25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue No.1 is answered in the negative and decided against the respondent.

Issue No. 4 :

27. Not pressed.

Relief :

28. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 453/2016

Date of Institution : 20-8-2016

Date of Decision : 20-01-2020

Shri Prem Singh s/o Shri Karam Chand, r/o Village & P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. ….*Petitioner.*

Versus

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, District Chamba, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Soham Kaushal, Dy. DA

Award :

The reference given below has been received from the appropriate Government for adjudication:-

> "Whether alleged termination of services of Sh. Prem Singh S/O Sh. Karam Chand Village & P.O. Mindhal, Tehsil Pangi, Distt. Chamba H.P. during 7/2004 by the Executive Engineer, HPPWD Division, Killar (Pangi) Tehsil

Pangi, District Chamba, H.P who had worked as beldar on daily wages basis only for 159.5 days during the year 2001 to 2004 and has raised his industrial dispute *vide* demand notice dated 18/1/2013 after more than 8 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 2001 to 2004 and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis in the year 1994. He had worked uptil July, 2004 with the respondent. Fictional breaks were given to him from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The respondent had unlawfully terminated the services of the petitioner. He had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of 'first come last go'. The names of the juniors who were retained in service by the respondent are Shri Jai Dass and twenty two others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage him, but without success. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 2001 and he had worked as such till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court and as harness cases. No workman junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute forthwith. It was only raised by him before the Labour Officer in the year 2013, i.e. after about 09 years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 12-6-2018:-

1. Whether termination of service of petitioner by the respondent from July, 2004 is/was legal and justified as alleged? . . *OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition is bad on account of delay and laches as alleged? . .*OPR.*

Relief:

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:-

Issue No.1	:	Decided accordingly
Issue No. 2	:	Lump sum compensation of ₹25,000/-
Issue No. 3	:	Not pressed
Issue No. 4	:	Negative
Relief.	:	Petition is partly allowed awardin lump sum compensation of ₹25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Prem Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed documents purportedly in support of his claim, which are Ex.PW1/B to Ex.PW1/L.

In the cross-examination, he denied that he had not worked as a daily waged beldar in the department from the year 2001 uptil the year 2004. Volunteered that, he had worked from the year 1994 uptil July, 2004. He denied that he had not worked in the department from the year 1994 uptil the year 2001. He also denied that he had not worked for 160 days in all the years to fulfill the criteria. He specifically denied that no junior to him was kept at work by the

department. He owns land. He admitted that he does the days drudgery privately. He denied that he is making a phoney statement.

11. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment letter had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again for work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re- engaged, the petitioner had not been called for work.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the mandays chart relating to the co-workers.

14. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in year 1994 and had worked as such till July, 2004. The respondent has pleaded that the petitioner was appointed as a daily waged beldar in the year 2001 and he had worked as such uptil the year 2004. Although, the petitioner (PW1) in his cross-examination denied the fact that he had been engaged in the year 2001 by the respondent and had worked only uptil the year 2004, but the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/B. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of June, 2001 for the first time as a daily waged beldar and that he had only worked as such uptil July, 2004. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1994, as claimed.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as **Narain Singh** vs. **The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875** that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as **State of Himachal Pradesh & another** vs. **Shri Partap Singh, 2017 (1) Him L.R. 286**, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajeev Kumar, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In **R.M. Yellatty** vs. **Assistant Executive Engineer, (2006) 1 SCC 106,** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of July, 2004. From the mandays chart Ex. RW1/B placed on the file, it becomes clear that the petitioner had not completed 160 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, i.e. July, 2004, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali** vs**. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:-

> *"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

21. Ex. RW1/C *i.e.* the year-wise mandays chart of beldar category relating to Shri Hukkam Chand and twenty six others, reveals that Smt. Ram Dei was appointed by the respondent in the year 2003, whereas the services of Shri Sham Lal and Shri Gautam Singh were engaged in the years 2006 and 2007 respectively. Of course, a note has been given on Ex. RW1/C that Smt. Ram Dei was engaged as per the orders of the Court/Tribunal, but that would not defeat the claim of the petitioner that she was junior to him. A note has also been given on Ex.RW1/C that S/Shri Sham Lal and Gautam Singh were appointed on compassionate grounds. But, however, the dates of deaths of their fathers have not come on the file. Admittedly, both the above named persons and Smt. Ram Dei are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner, which as per Ex.RW1/B took place on June, 2001. There is nothing on record to show that the fathers of S/Shri Sham Lal and Gautam Singh were senior to the petitioner. It is also not made out from the record that the petitioner was junior to Smt. Ram Dei. This indicates that persons junior to the

petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of engaging/re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

22. Since, the provisions of Section 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 160 days in a block of twelve calendar months preceding termination to derive benefit under this Section of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as **State of Himachal Pradesh & Anr.** Vs. **Shri Partap Singh, 2017 (1) Him L.R. 286.**

23. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Section 25-G of the Act.

24. However, the petitioner's allegation that the respondent had violated the provisions of Section 25-H of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit Ex.PW1/A, as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh hands were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

25. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh** vs. **Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:-

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

26. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram** vs. **State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

27. In case titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six

years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer** vs. **Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another** vs. **Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)** , it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr.** vs. **Raj Kumar, 2019 (160) FLR 791,** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 159½ days as a non-skilled worker. His services, as per the reference were disengaged in July, 2004 and he had raised the industrial dispute by issuance of demand notice after more than **eight years** *i.e.* demand notice was given on 18.1.2013. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are decided accordingly, while issue No. 4 is answered in the negative and decided against the respondent.

Issue No. 3 :

29. Not pressed.

Relief :

30. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of `25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2020.

Sd/-

(YOGESH JASWAL),

Presiding Judge,

Labour Court-cum-*Industrial*

Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 163/2016

Date of Institution : 17-3-2016

Date of Decision : 21-01-2020

Smt. Sumitra w/o Shri Mahesh, r/o Village Kuthah, P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Pangi at Killar, Tehsil Pangi, District Chamba, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

Award :

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of between Smt. Sumitra, W/o Sh. Mahesh Kuthah P/O Dharwas, Tehsil Pangi, Distt. Chamba H.P. from 2004 by the Executive Engineer, IPH & HPPWD Division, Pangi at Killar Tehsil Pangi District Chamba, H.P. who had worked as beldar on daily wages basis only for 57 days, 26 days, 30 days, 107 days, 59 days, 44.5 days, 135 days, 26 days, 138.5 days, 100 days, 118 days and 59 days during the year 1990, 1991, 1992, 1993, 1994, 1995, 1997, 1999, 2001, 2002, 2003 and 2004 and had raised her industrial dispute vide demand notice dated nil (received in the office of Labour Officer Chamba on 29.05.2012) after more than 8 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 1990 to 2004 and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis in the year 1994. She had worked uptil October, 2004 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The respondent had unlawfully terminated the services of the petitioner. She had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of 'first come last go'. The names of the juniors who were retained in service by the respondent are S/Shri Suraj Ram, Chunku Ram, Budhi Ram, Dev Raj and

Bameshwar Dutt. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but without success. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14, 16 and 21 of the Constitution of India. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 1990 and she had worked as such till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will. She had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No workman junior to the petitioner has been retained in service by the respondent. The respondent has not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute forthwith. It was only raised by her before the Labour Officer in the year 2011, i.e. after about seven years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 21-11-2018:-

1. Whether termination of the service of the petitioner by the respondent from year, 2004 is/was legal and justified as alleged? . . *OPP*

.

2. If issue no.1 is proved in affirmative, to what service benefits petitioner is entitled to? . . *OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:-

Issue No.1	:	Decided accordingly
Issue No.2	:	Lump sum compensation of 1,25,000/-
Issue No.3	:	Negative
Issue No.4	:	Negative
Relief.	:	Petition is partly allowed awarding lump sum compensation of ₹1,25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Sumitra examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed documents purportedly in support of his claim, which are Ex.PW1/B to Ex.PW1/C.

In the cross-examination, she stated that she had worked in the department from the year 1994 uptil October, 2004. She denied that she had not worked as a beldar in the department from the year 1997 uptil October, 2004. She also denied that she had left the work of her own accord. Further, she denied that she had not worked for 160 days in all the years to fulfill the criteria. She owns land, which she cultivates. She denied that no junior to her had been kept at work by the department. She further denied that the department had followed the provisions of the Act. She denied that she is making a phoney statement.

11. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment letter had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again for work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the mandays chart relating to the co-workers.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar by the respondent/department. The mandays chart, Ex.RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of August, 1990 by the respondent.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or she herself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as **Narain Singh** vs. **The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875** that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as **State of Himachal Pradesh & another** vs. **Shri Partap Singh, 2017 (1) Him L.R. 286**, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajeev Kumar, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case, as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

18. Though, the petitioner in her statement of claim as well as her affidavit Ex.PW1/A claimed that she had completed more than 160 days in the preceding twelve calendar months, but this fact is not supported by any other oral or documentary evidence on record.

19. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, she will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that she had worked for 160 days in preceding twelve calendar months prior to her alleged retrenchment. In **R.M. Yellatty** vs. **Assistant Executive Engineer, (2006) 1 SCC 106,** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

20. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that she had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of her alleged termination, which as per the statement of claim took place in October, 2004. No mandays chart of the petitioner is there on the file to establish that she had worked continuously for a period of

160 days in a block of twelve calendar months prior to the date of her alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/B that she had only worked for 67 days in the immediate preceding year of her dismissal, which is below the required 160 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali** *vs.* **State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

21. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:-

> *"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

22. Placed on record by the respondent is the year-wise mandays detail of four workers in HPPWD Division, Killar (Pangi), as Ex.RW1/C. Similar mandays details has also been proved on record by the petitioner as Ex.PW1/C. The mandays detail reveals that Shri Suraj Ram was appointed in the year 1997, whereas the services of Shri Chunku Ram and Shri Budhi Ram were engaged in the years 2000 and 2001 respectively. At the cost of reiteration, I will like to add that the month and year of initial appointment of the petitioner as per Ex.RW1/B is August, 1990. There is nothing on record to show that the above named workers were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to her.

23. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Sections 25-G of the Act.

24. Faced with the situation, it was contended for the respondent that the junior workers had been engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given in Ex. RW1/C (also Ex.PW1/C) that all the above named workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the aforesaid persons shown therein had been re-engaged does not defeat the claim of petitioner that they were junior to her. Even if the petitioner has failed to prove on record that she had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, she was entitled for regularization of her service, but the respondent cannot be absolved from his accountability with regard to the provisions of Sections 25-G of the Act, which as discussed above have been violated. (Please see **State of Himachal Pradesh & Anr.** Vs. **Shri Partap Singh, 2017 (1) Him L.R. 286).**

25. However, the petitioner's allegation that the respondent had violated the provisions of Section 25-H of the Act as well, to my mind, does not appear to have been

substantiated. The petitioner's affidavit Ex.PW1/A, as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh hands were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

26. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh** vs. **Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:-

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

27. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram** vs**. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

28. In case titled as **Assistant Engineer Rajasthan Development Corporation and another** vs**. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer** vs. **Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited** vs. **Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)** , it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr.** vs. **Raj Kumar, 2019 (160) FLR 791,** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full

and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 900 days as a non-skilled worker. Her services, as per the reference were disengaged in the year 2004 and had raised the industrial dispute by issuance of demand notice after more than **eight years** *i.e.* demand notice was given on 29-5-2012. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

29. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues no. 1 and 2 are decided accordingly, while issue no.4 is answered in the negative and decided against the respondent.

Issue No. 3

30. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondent.

Relief :

31. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of `1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No.	:	460/2016
Date of Institution	:	20-8-2016
Date of Decision	:	23-01-2020

Shri Beli Ram s/o Shri Dass, r/o Village Benegi, P.O. Tarella, Tehsil Churah, District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dharam Malhotra, Adv.
For the Respondent : Sh. Soham Kaushal, DDA

Award :

The reference given below has been received from the appropriate Government for adjudication:-

> "Whether alleged termination of services of Sh. Beli Ram S/O Sh. Dass Village Benegi P.O. Tarella Tehsil Churah Distt. Chamba H.P from September, 2003 by Executive Engineer, HPPWD Division, Killar (Pangi) Tehsil Pangi, District Chamba, H.P. who had worked as beldar on daily wages basis only for 58 days during the year August and September, 2003 and has raised his industrial dispute vide demand notice dated 29/4/2015 after more than 12 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year mentioned as above and delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar w.e.f. April, 2001 by the respondent. He continuously worked without breaks uptil September, 2003/2004 with the respondent. His services were orally terminated by the respondent without any notice or reason. Thereafter, the petitioner had made several requests to the respondent, but he was not re-engaged despite availability of work and funds. Persons junior to him have been allowed to continue as beldars. The respondent has completely ignored the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). He has worked for 160 days preceding twelve calendar months. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Act. The act and conduct of the respondent is illegal and unjustified. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on the ground of delay and laches. The contents of the petition are denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 2003 and thereafter had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent for re-engagement. No person junior to the petitioner had ever been engaged in his place. There has been no violation of any of the provisions of the Act by the respondent. It is admitted that a demand notice dated 29.4.2015 was served upon the respondent by the petitioner. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 04-10-2018:—

1. Whether termination of service of petitioner by the respondent during September, 2003 is/was illegal and unjustified as alleged? . . *OPP*.

2. If issue No. 1 is proved in affirmative, to what service benefits petitioner is entitledto?. . *OPP*.

3. Whether the claim petition is not maintainable in the present form? . . *OPR*.

4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . .*OPR*.

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:-

Issue No.1	:	Negative
Issue No.2	:	Negative
Issue No.3	:	Affirmative
Issue No.4	:	Negative
Relief.	:	Petition is dismissed as per the operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 And 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Beli Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he stated that he had worked in the department from the year 2001 uptil the year 2004. He admitted that he cannot produce any record showing that he had worked from the year 2001 uptil the year 2004. He denied that he had not worked continuously

in the department from the year 2001 uptil the year 2004. He further denied that the he had left the work of his own sweet will. Further, he denied that he had not worked for 160 days in any of the years to fulfill the criteria of tribal area. He admitted that he owns land, which he cultivates. He denied that no junior to him was kept at work by the department. He denied that he is making a phoney statement.

11. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment letter had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again for work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

12. Ex.RW1/B is the copy of mandays chart relating to the petitioner.

13. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex.RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of May, 2002 by the respondent and that he had worked as such intermittently uptil September, 2003.

14. Now the point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job?

15. It is well known that abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajeev Kumar (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

16. Now comes the question as to whether in the month of September, 2003, the services of the petitioner were finally terminated by the respondent or not?

17. As per the reference received from the appropriate Government, the services of the petitioner stood finally terminated during September, 2003. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in the month of September, 2004. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his services had finally been terminated by the respondent in the month of

September, 2004. Even while under cross-examination by the respondent, the petitioner maintained that he had worked in the department from the year 2001 uptil the year 2004. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Then, as per the mandays chart Ex.RW1/B, which is not in dispute, the petitioner is shown to have worked for a period of 30 days in the month of September, 2003. Thereafter, he is shown to have not worked even for a single day for the period from October, 2003 uptil December, 2005. Since, it has not been pleaded nor stated by the petitioner that his services stood terminated by the respondent in the month of September, 2003, therefore, the question of final termination of his services by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

18. For the discussion and findings arrived at by me above, the allegations of the petitioner that the principle of 'last come first go' had not been adhered to and that new/fresh hands had also been appointed and further that he had not been given an opportunity of re-engagement by the respondent after his termination pale into insignificance.

19. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

20. Taking in to account my findings on issues No. 1 and 2 above, it is held that the claim petition is not maintainable in the present form. This issue is decided in favour of the respondent and against the petitioner.

Issue No. 4 :

21. In **Ajayab Singh vs. Sirhind Co-operative Marketing-**cum-**Processing Society Limited and Another**, **(1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:—

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the *vice* of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

23. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 529/2016

Date of Institution : 23-8-2016

Date of Decision : 23-01-2020

Shri Beli Ram s/o Shri Laxman, r/o Villlage Chaeque, P.O. Tarella, Tehsil Churah, District Chamba, H.P. ….*Petitioner*.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. … *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Dharam Malhotra, Adv.

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

Award :

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Sh. Beli Ram S/O Sh. Laxman Village chaeque P.O. Tarella Tehsil Churah Distt. Chamba H.P. *w.e.f.* 1-9-2004 by the Executive Engineer, HPPWD Division, Killar Tehsil Pangi District Chamba, H.P. who had worked as beldar on daily wages basis only for 215 days during the year 2001 to 2004 and has raised his industrial dispute vide demand notice dated 21-40-2015 after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during the year 2001 to 2004 and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar *w.e.f.* April, 2001 by the respondent. He continuously worked without breaks uptil September, 2004 with the respondent. His services were orally terminated by the respondent without any notice or reason. Thereafter, the petitioner had made several requests to the respondent, but he was not re-engaged despite availability of work and funds. Persons junior to him, namely, Shri Gautam Singh and Shri Sham Lal were engaged by the respondent, but neither the petitioner was asked to join duty nor served with any notice. The respondent has completely ignored the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). He has worked for 160 days preceding twelve calendar months. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Act. The act and conduct of the respondent is illegal and unjustified. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on the ground of delay and laches. The contents of the petition are denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 2001 and had worked intermittently uptil the year 2004 with the department and thereafter had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent for re-engagement. No person junior to the petitioner had ever been engaged in his place. There has been no violation of any of the provisions of the Act by the respondent. It is admitted that a demand notice was served upon the respondent in the year 2015 by the petitioner. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 21-11-2018:—

1. Whether termination of the services of the petitioner by the respondent *w.e.f.* 01-09-2004 is/was legal and justified as alleged? . . *OPP.*

2. If issue no. 1 is proved in affirmative, to what service benefits petitioner is entitled to? . . *OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition is bad on account of delay and latches on the part of the petitioner as alleged? . . OPR.

Relief:

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	:	Decided accordingly
Issue No.2	:	Lump sum compensation of ₹25,000/-
Issue No.3	:	Negative
Issue No.4	:	Negative
Relief.	:	Petition is partly allowed awarding lump sum compensation of ₹25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Beli Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he stated that he had worked in the department from the year 2001 uptil the year 2004. He cannot produce any record which shows that he had worked in the department from the year 2001 uptil the year 2004. He denied that he had not worked continuously as a beldar in the department from the year 2001 uptil the year 2004. He also denied that he had left the work of his own sweet will. Further, he denied that he had not worked for 160 days in any of the years to fulfill the criteria of tribal area. He admitted that he owns land, which he cultivates. He denied that he is making a phoney statement.

11. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment letter had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again for work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re- engaged, the petitioner had not been called for work.

12. Ex.RW1/B is the copy of mandays chart relating to the petitioner.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar by the respondent/department. The mandays chart, Ex.RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of July, 2001 by the respondent.

14. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

15. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajeev Kumar (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

16. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

17. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In **R.M. Yellatty** vs. **Assistant Executive Engineer, (2006) 1 SCC 106,** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

18. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place on 01-9-2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/B that he had only worked for 31 days in the preceding twelve calendar months from the date of his termination, which is much below the required 160 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali** vs**. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25- F of the Act are not attracted in this case.

19. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:-

> *"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

20. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, persons junior to him were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

21. However, the petitioner's allegation that the respondent had violated the provisions of Section 25-H of the Act, to my mind, appears to have been substantiated. The statement of claim is specifically existent in the names of the persons who were allegedly

appointed by the respondent after his retrenchment. It has been claimed in the statement of claim that Shri Sham Lal was appointed by the respondent on 2nd June, 2006, whereas the services of Shri Gautam Singh were engaged on 7th September, 2007. To the similar effect it has been claimed by the petitioner in his affidavit Ex.PW1/A. This claim having not been challenged during his cross-examination by the respondent deserves acceptance. More so, when the pleadings and ocular evidence of the respondent do not refute the correctness of such fact. Section 25-H of the Act, which is alleged to have been violated by the respondent says:

> *"25-H. Re-employment of retrenched workmen. Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re- employment shall have preference over other persons"*

22. In view of this provision, where any workman has been retrenched, and the employer proposes to take into his employment any person, he shall give an opportunity to the retrenched workman to offer himself for re-employment and such retrenched workmen who offers himself for re-employment shall have a preference over the other persons. There is nothing on the file to establish that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner.

23. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Section 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

24. Faced with the situation, the learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh** vs. **Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

25. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram** vs. **State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

26. In case titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising

industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited** vs. **Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC),** it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr**. vs. **Raj Kumar, 2019 (160) FLR 791,** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full

and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 215 days as a non-skilled worker. His services, as per the reference were disengaged in the year 2004 and he had raised the industrial dispute by issuance of demand notice after about **eleven years** *i.e.* demand notice was given on 21-4-2015. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues no. 1 and 2 are decided accordingly, while issue no.4 is answered in the negative and decided against the respondent.

Issue No. 3 :

28. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondent.

Relief :

29. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties

are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 35/2014

Date of Institution : 23-1-2014

Date of Decision : 23-01-2020

Shri Sumit Kumar s/o Shri Manohar Lal, r/o VPO & Tehsil Amb, District Una, H.P.
. . *Petitioner.*

Versus

The Managing Director/Employer, M/S Tigaksha Metallics Pvt. Ltd. Plot No.16, Ram Nagar, Industrial Area Gagret, Tehsil Amb, District Una, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Mukul Vaid, Adv. *vice*

For the Respondent : Sh. Rajat Chaudhary, adv. *vice*

Award :

The reference given below has been received from the appropriate Government for adjudication:-

> "Whether termination of the services of Shri Sumit Kumar S/O Shri Manohar Lal, r/o V.P.O. & Tehsil Amb, District Una, H.P. *w.e.f.* 18-08-2012 by the Managing Director/Employer, M/S Tigaksha Metallics Pvt. Ltd., Plot No.16, Ram Nagar Industrial Area Gagret, Tehsil Amb, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as an operator by the respondent *w.e.f.* 2-1-2008. He was a permanent

workman of the respondent after the expiry of eight months. Since his wife had delivered a child, the petitioner after seeking permission from the management had gone to his native place on a gate pass from 17-8-2012 to 26-8-2012. He could not perform his duties, as he had to take care of his wife. On 27-8-2012 when he had returned back to work, he was ordered to sit at the gate office daily since 2-8-2012. He was asked to produce the delivery certificate. Since the delivery had taken place at home, the management had asked him to produce a certificate from the Panchayat in this regard. He had produced the same. On 31-8-2012 on the completion of the shift, he was told that his services were not required and his entry into the factory was stopped, as he had not applied for leave in advance. Secondly, he was also an office bearer of the Kamgar Union (INTUC). All the office bearers and its members have been terminated for forming the union. Since, his termination is in hire and fire, it is against the provisions of natural justice. No show cause notice, inquiry or charge-sheet was served upon him before his termination. He was not paid one month's pay in lieu of the notice, nor any retrenchment compensation was granted. The respondent has violated the provisions of Section 25-F (a) and 25-F (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). He was drawing Rs.5,500/- per month as wages. No permission as required under Section 25-N of the Act had been obtained from the competent authority. His termination amounts to unfair labour practice. Hence, the petition for his reinstatement with all other consequential benefits.

3 . Reply was filed by the respondent taking preliminary objections regarding lack of maintainability, that the petitioner had willfully absented himself during different intervals without any sanction of leave and that the petitioner was issued a show cause notice, but he did not report to his superior officer and had remained continuously absent. The contents of the petition were denied on merits. It was asserted that the petitioner was not a regular employee, but

was only a trainee *w.e.f.* 1-11-2008. It is admitted that the petitioner had gone on a gate pass on 17-8-2012. An employee can only go out on a gate pass for a few hours, but the petitioner had remained absent from duty *w.e.f.* 17-8-2012 to 26-8-2012. No leave has been got sanctioned by him. He was issued a show cause notice, but it was not responded to. Another show cause notice was issued to the petitioner on 19-6-2012. He filed the reply, wherein he had admitted his willful absence and had undertaken not to repeat it in future. On his writing a letter to the management, he was asked to produce the medical certificate, which he failed to produce. His services were terminated *w.e.f.* 24-9-2012, as he had remained absent even after 31-8-2012. He was paid Rs.3,366/- as full and final settlement vide a cheque. The last salary drawn by the petitioner was Rs.5,200/-. His services had been terminated in due course of law. The respondent, thus, prays for the dismissal of the claim petition.

4. No rejoinder was filed by the petitioner.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 27-4-2015 :-

1. Whether termination of the services of the petitioner by the respondent *w.e.f.* 18-8-2012 is/was improper and unjustified as alleged? . . *OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the petitioner has concealed true and material facts from the Court as alleged? . .*OPR.*

5. Whether the petitioner has remained willfully absent from his duty as alleged. If so, its effect? . .*OPR.*

Relief :

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned Authorized Representatives/counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:-

Issue No.1	:	Negative
Issue No.2	:	Negative
Issue No.3	:	Affirmative
Issue No.4	:	Affirmative
Issue No.5	:	Affirmative
Relief	:	Petition is dismissed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 5 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The learned vice counsel for the respondent urged at the time of hearing that the petitioner was on probation and not a 'workman' within the definition of Section 2(s) of the Act; that the respondent could extent the period of probation till the petitioner completed the full training and qualified the test; that the training could either be terminated or extended without giving any notice to the petitioner and that the respondent had willfully absented himself without seeking any leave. It was further submitted that there is no infirmity in the termination of the petitioner.

11. The learned vice counsel for the petitioner urged at the time of hearing that the petitioner is a workman within the meaning of Section 2(s) of the Act and that the respondent had terminated his services on 24th September, 2012 in total disregard of the principle of natural justice and that the petition deserves to be allowed and the petitioner be ordered to be reinstated with full back wages.

12. Through the testimony of Shri Kamal Kant Awasthi (RW1), the respondent has produced on record a copy of agreement entered into between the respondent/company and the petitioner as Ex.RW1/B. Its perusal discloses that the company had agreed to engage the petitioner as a trainee and that his training was for a period of three years, which was to commence from 1st of November, 2008. This agreement also provides that the company could

extend the period of training till it was not completed by the petitioner and he had not qualified the test. It is also evident from this agreement that in case the petitioner failed in any intermediate test or did not show satisfactory performance or committed any misconduct, the training could either be terminated or extended without giving any notice to the petitioner. This document is not in dispute, as Shri Sumit Kumar (PW1), the petitioner categorically admitted in his cross-examination that he had been engaged by the company as at trainee.

13. Section 2(oo) (bb) of the Act reads as under:-

"*Section 2(oo)-"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-*

(a)……

(b)……..

(bb) termination of the service of the workman as a result of the non- renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c)……"

14. According to the respondent, the petitioner had been willfully absenting himself at intervals, without seeking permission and leave from the competent authority. A warning letter was issued to him on 9-10-2011. A show cause notice was also issued to him for his remaining absent from duty without intimation or prior sanction of leave. Shri Kamal Kant Awasthi (RW1) so stated in his substantive evidence. He produced on record copy of warning letter dated 9-10-2011 as Ex.RW1/E and copy of show cause notice dated 9-6-2012 as Ex.RW1/F, which both were issued to the petitioner. Both these documents are not in dispute. Shri Sumit Kumar (PW1), the petitioner in his cross-examination categorically admitted that the aforesaid warning letter and show cause notice had been served upon him. The petitioner also clearly admitted that without intimation, he had remained absent from duty w.e.f. 6-6-2012 to 18-6-2012. He further admitted that from 18-8-2012 to 31-8-2012, he had remained absent without any leave. It was also clearly admitted by him that he had willfully and intentionally remained absent from duty during the aforesaid periods. Apart from this, it is also evident from the perusal of copies of letters written by the petitioner to the management as Ex.RW1/G and Ex.RW1/H that he had remained absent from work, without any intimation and prior sanction of leave. A perusal of Ex.RW1/G also goes to show that the petitioner had tendered an apology for his remaining absent from duty. For willfully remaining absent from duty, the training of the petitioner stood discontinued by the company *w.e.f.* 24th September, 2012, as is evident from the perusal of copy of letter Ex.RW1/I.

15. The law with respect to the termination of the service of a probationer is well settled that the probationer is not a workman within the meaning of Section 2(s) of the Act and the service of the probationer can be terminated during the period of probation in terms of the agreement and such termination does not amount to retrenchment within the meaning of Section 2(oo) of the Act.

16. In **M.Venugopal** vs**. Divisional Manager 1994 (68) FLR 443 (SC)** the service of the workman was terminated during the extended probation period. The Hon'ble Supreme Court held that the termination before the expiry of the period of probation fell within the ambit of Section 2(oo) (bb) of the Act and it did not constitute retrenchment.

17. In **Escorts Limited** vs**. Presiding Officer (1997) 11 SCC 521**, the workman was appointed on temporary basis for a period of two months. The terms of appointment enabled the employer to terminate the services at any stage without assigning any reason. The Hon'ble Supreme Court held that the termination of service under the said term, even though effected before the expiry of the specified period, did not amount to retrenchment.

18. In **Kalyani Sharp India Ltd.** vs. **Labour Court No.1 Gwalior, 2012 (93) FLR 1183 (SC),** the trainee was terminated during the period of probation. The Hon'ble Supreme Court held that there was no infirmity in the termination of trainee on probation.

19. In the present case, as discussed above, the petitioner was a 'trainee' on probation initially for a period of three years from 1st November, 2008. The recital of the agreement (Ex.RW1/B) provide that in case the trainee was unable to complete the full training course within the stipulated period of three years and to take the final test to be held after the completion of the training owing to illness or due to any other circumstance(s), the company could extend the period of training till he completed the full training and qualified the test. From the perusal of Ex.RW1/C, it is evident that the training period of the petitioner stood extended by the company for a period of further one year *w.e.f.* 1-11-2011 to 31-10-2012. It is also evident from the contents of the agreement (Ex.RW1/B) that in case the trainee failed in any intermediate test or did not show satisfactory performance or committed any misconduct, the training could either be terminated or extended without giving any notice to the trainee (petitioner). Admittedly, the petitioner had intentionally and willfully remained absent from duty at intervals, as discussed. It, to my mind, amounts to a serious misconduct on the part of the petitioner. Accordingly, for his willful absence from duty the training of the petitioner stood discontinued by the company *w.e.f.* 24th September, 2012. Following the principles laid down by the Hon'ble Supreme Court in the aforesaid judgments, it is my humble opinion that the petitioner is not a workman within the meaning of Section 2(s) of the Act and there is no infirmity in his termination during the extended probation period.

20. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, issues no. 1 and 2 are answered in the negative and decided against the petitioner, while issue no.5 is answered in the affirmative and decided in favour of the respondent.

Issues No.3 And 4 :

21. In view of my findings on issues No.1, 2 and 5 above, it is held that the claim petition is not maintainable in the present form and that the petitioner had suppressed true and material facts from the Court. The petition is malafide.

22. These issues are answered in the affirmative and in favour of the respondent.

Relief :

23. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2020

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT- CUM-**INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 306/2015

Date of Institution : 16-7-2015

Date of Decision : 23-01-2020

Shri Narayan Singh s/o Shri Inder Ram, r/o V.P.O. Tissa, Tehsil Churah, District Chamba, H.P. ....*Petitioner.*

Versus

The Manager, H. P. State Handicrafts and Handloom Corporation Limited Chamba, District Chamba, H.P. ….*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Akshay Jaryal, Adv.

For the Respondent : Sh. K.L. Thakur, Adv.

Award :

The reference given below has been received from the appropriate Government for adjudication:

> Whether termination of the services of Shri Narayan Singh S/O Shri Inder Ram, R/O V.P.O. Tissa, Tehsil Churah, District Chamba, H.P. employed as piece rated shawl weaver during September, 2009 by the Manager, H.P. State Handicraft and Handloom Corporation Limited Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2 . In furtherance to the reference, it is averred by the petitioner in the statement of claim that he had served the respondent continuously as a shawl weaver from June, 1990 uptil the year 2009. He had never been charge-sheeted for any act of indiscipline or misconduct. He was disengaged by the respondent in the month of September, 2009 without affording any opportunity of being heard. The respondent had violated the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and the policy of the Corporation. The principle of 'last come first go' had been violated by the respondent, as persons junior to him, namely, Smt. Maheshwari and ten others were retained. Fictional breaks were also given to the petitioner by the respondent, whereas his juniors were allowed to complete 240 days in each working year. Hence, it was prayed that the petitioner be re-engaged with all consequential benefits.

3. Reply was filed by the respondent taking preliminary objections regarding lack of maintainability, cause of action, locus standi, estoppel and that the petitioner had not come to the Court with clean hands. The contents of the petition were denied on merits. However, it was admitted that the petitioner had been working as a shawl weaver in Tissa Textile of the respondent *w.e.f.* June, 1990 uptil September, 2009. Thereafter, the petitioner had left the job of his own sweet will and had opted to work in NAREGA. His services had never been terminated by the

respondent. He thereafter had never worked with the respondent. The petitioner was not a regular worker of the respondent, he had worked on piece rate basis and had been receiving a fixed amount for each piece of shawl woven by him. The persons named in the petition were regular workers of the respondent, who had been working on the minimum wages as fixed by the State Government. The petitioner cannot claim any parity with them. The claim of the petitioner is false and baseless. Hence, it is prayed that the petition be dismissed.

4. No rejoinder was filed by the petitioner.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 06-3-2018:-

1. Whether the termination of the services of the petitioner by the respondent during Sept., 2009 is/was improper and unjustified as alleged? . . *OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . *OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . .*OPR.*

4. Whether the petitioner has no cause of action to file the present case as alleged? . . *OPR.*

5. Whether the petitioner is estopped from filing the present case as alleged? . . *OPR.*

6. Whether the petitioner has not come to the Court with clean hands as alleged? . . .*OPR.*

Relief :

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	:	Yes
Issue No. 2	:	Partly affirmative
Issue No. 3	:	No
Issue No. 4	:	No
Issue No. 5	:	No
Issue No. 6	:	No
Relief	:	Petition is partly allowed as per the operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 And 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Narayan Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim which are exhibited as Ex. PW1/B, Ex.PW1/C and Ex.PW1/D1 to Ex.PW1/D3.

In the cross-examination, he stated that he had worked in the years 2010-2011 under MNREGA. He denied that he had worked as a piece rate worker with the respondent. He further denied that he had been marking his attendance in the piece rate workers register. It was also denied by him that as he did not want to work as a piece rate worker, he had left the job despite being called repeatedly. He also denied that he had not worked for 240 days or more. Further, he denied that he had never been kept as a daily waged worker in Tissa Textile, Handicraft and Handloom Limited. He specifically denied that he is making a phoney statement.

11. No ocular or documentary evidence was led by the respondent despite being afforded ample opportunities in this regard. His evidence stood closed under the orders of the Court on 8-8-2019.

12. It is an admitted case of the parties that the services of the petitioner were engaged as a shawl weaver. The parties are also not at variance that the petitioner had worked as a shawl weaver from June, 1990 till September, 2009. The mandays chart Ex.PW1/B produced by the petitioner is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of June, 1990 by the respondent.

13. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

14. It is common knowledge that the abandonment has to be proved by the employer like any other fact. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is neither any oral or documentary evidence on record on the part of the respondent to show that any notice was served upon the petitioner calling upon him to join his duties. Absence from duty is a serious misconduct. It is also not borne out from the record that any disciplinary action was initiated against the petitioner by the respondent because of the alleged willful absence from work of the former. The plea of abandonment put forth by the respondent/employer is not established.

15. The defence of the respondent is also to the effect that the petitioner had never been engaged as a daily waged worker, rather he had worked on piece rate basis and had been receiving a fixed amount for each piece of shawl woven by him. However, the respondent has not placed on the file any document evidencing that the petitioner was employed on piece rate basis. Moreover, the mandays chart Ex.PW1/B reveals that in most of the years from the year 1990-1991 uptil the year 2004-2005, the petitioner had worked for more than 240 days with the respondent. A person working for 313 days in a year cannot be termed as a worker on piece rate basis. Although, it was suggested to the petitioner by the respondent that he had been marking his presence in the piece rated workers register, but such register has not seen the light of the day. The petitioner denied such suggestion and there is not an iota of oral evidence on record to show that the petitioner had been marking his attendance in such register.

16. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

17. It was contended by the learned counsel for the respondent that the petitioner had not worked for 240 days during the preceding twelve months, and therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had continuously worked with effect from June, 1990 uptil the year 2009 and had been completing more than 240 days in each calendar year.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B, if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty** vs. **Assistant Executive Engineer, (2006) 1 SCC 106,** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. Although, in his chief-examination the petitioner claimed that he had worked continuously with the respondent as a shawl weaver since June, 1990 uptil the year 2009, but his such self serving testimony is not supported by any other oral or documentary evidence on record. The mandays chart produced by the petitioner as Ex.PW1/B only gives a detail of his working from the year 1990 uptil the year 2005. No other mandays chart of the petitioner is there on the file to establish that thereafter also he had worked continuously for a period of 240 days in each calendar year uptil the year 2009. Be it recorded here that as per the reference the termination of the petitioner is alleged to have taken place in the month of September, 2009. So, as envisaged under Section 25-B of the Act, it is not established that the petitioner had continuously worked for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25- F of the Act are not attracted in this case.

20. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

> *"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

21. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 4 of the statement of claim. The petitioner Shri Narayan Singh clearly stated

that juniors to him were retained in service by the respondent after his disengagement. He clearly gave the names of eleven such juniors in his affidavit Ex.PW1/A.

22. Though, the respondent has refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department but, however, such plea is not established on record. No iota of evidence was led by the respondent before this Tribunal to prove that no persons junior to the petitioner had been retained in service by the department. Though, no seniority list has been placed and exhibited on record by the petitioner, but his oral evidence to the effect that persons junior to him were retained in service by the respondent after his termination has gone un-rebutted on record. Hence, the version of the petitioner that after his termination persons junior to him were retained by the respondent has to be accepted as correct on the balance of probabilities.

23. Since, the provisions of Section 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 240 days in a block of twelve calendar months preceding termination to derive benefit under this Section of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as **State of Himachal Pradesh & Anr.** Vs. **Shri Partap Singh, 2017 (1) Him L.R. 286.**

24. Such being the situation, it can safely be held that the respondent has contravened the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

25. However, the petitioner's allegation that the respondent had violated the provisions of Section 25-H of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit Ex.PW1/A, as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh hands were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

26. While testifying in the Court as PW1, the petitioner has given his age as 53 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

27. These issues are decided accordingly.

Issues Nos. 3 and 4 :

28. In view of the findings on issues no.1 and 2 above, it is crystal clear that the petitioner does have the locus standi as well as cause of action to file and maintain the present statement of claim/petition. Moreover, these issues were not pressed for by the learned counsel appearing for the respondent at the time of arguments. Hence, these issues are answered in the negative and are decided against the respondent.

Issue No. 5 :

29. No evidence of estoppel has been led by the respondent. Hence, this issue is also answered in the negative and is decided against the respondent.

Issue No. 6 :

30. It has not been shown by the respondent as to how the petitioner has not approached this Court with clean hands and what material facts have been concealed by him.

Otherwise also, from the pleadings, it cannot be said that there has been any concealment of facts on the part of the petitioner and that he had not approached the Court with clean hands. Hence, this issue is also answered in the negative and is decided against the respondent.

Relief :

31. In the light of what has been discussed hereinabove, the present reference/claim petition succeeds in part and the same is allowed partly. The retrenchment of the petitioner is set aside and quashed. The respondent is hereby directed to re-engage the petitioner forthwith. He shall be entitled to seniority and continuity in service from the date of his illegal termination September, 2009 *except back wages.* In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 53/2017

Date of Institution : 24-01-2017

Date of Decision : 23-01-2020

Shri Man Singh s/o Shri Guhlu Ram, r/o Village Kulal, P.O. Mindhal, Tehsil Pangi, District Chamba, H.P. . . *Petitioner.*

Versus

The Executive Engineer, Division, Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

Award :

The reference given below has been received from the appropriate Government for adjudication:-

"Whether alleged termination of services of Sh. Man Singh S/O Sh. Guhlu Ram Village Kulal PO Mindhal Tehsil Pangi, Distt. Chamba, H.P. during the year October, 2003, by the Executive Engineer, IPH & HPPWD Division, Pangi at Killar Tehsil Pangi District Chamba, H.P. who had worked as beldar on daily wages basis during the year 1998 to 2003 only for 367 days and has raised his industrial dispute vide demand notice dated 26-10-2015 after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as mentioned above and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis, without any appointment letter in the year 1997. He continuously worked with intermittent breaks uptil October, 2005 with the respondent. Fictional breaks were given to him from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent has violated the principle of 'first come last go'. For the tribal area, the State of Himachal Pradesh has framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that he had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of his termination, persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Sh. Tek Chand, Bhag Dei, Ram Dei, Dev Raj and Bameshwar Dutt. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1998 and who remained engaged till the year 2003. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2003, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2015, *i.e.* after about 12 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there

was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 23-5-2018:-

1. Whether termination of the services of the petitioner by the respondent during year October, 2003 is/was improper and unjustified as alleged? . . *OPP.*

2. If issue No.1 is proved in affirmative to what service benefits petitioner is entitled to? . .*OPP.*

3. Whether the petition is not maintainable in the present form as alleged? . . *OPR.*

4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? . .*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:-

Issue No.1	:	Partly affirmative
Issue No.2	:	Lump sum compensation of ₹25,000/-
Issue No.3	:	Negative
Issue No.4	:	Negative
Relief.	:	Petition is partly allowed awarding lump sum compensation of ₹25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Man Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he stated that he had worked in the department from the year 1998 uptil October, 2003. He also stated that he cannot produce any record showing that the department had kept him at work from the year 1998 uptil the year 2003. He denied that he had left the work of his own sweet will after October, 2003. Further, he denied that he had not worked for 160 days in any of the years to fulfill the criteria of tribal area. He admitted that no fictional breaks were given to him by the department. He denied that no juniors to him were kept at work by the department. He admitted that he owns land, which he cultivates. He denied that he is not employed since the year 2003. He denied that he is making a phoney statement.

11. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment letter had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again for work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work.

12. Ex.RW1/B is the copy of mandays chart relating to the petitioner.

13. Ex. RW1/C is the mandays chart relating to the co-workers.

14. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex.RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of October, 1998, by the respondent and that he had worked as such intermittently uptil October, 2003.

15. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajeev Kumar, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus'* to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus'* on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In **R.M. Yellatty** vs. **Assistant Executive Engineer, (2006) 1 SCC 106,** it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of October, 2003. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/B that he had only worked for 109 days in the immediate preceding year of his dismissal, which is below the required 160 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali** vs**. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:—

> *"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".*

21. Placed on record by the respondent is the year-wise mandays detail of eighteen workers in HPPWD Division, Killar (Pangi), as Ex.RW1/C. A mandays detail of six workers has also been proved on record by the petitioner as Ex.Px. Both these mandays details reveal that the services of Shri Tek Chand, Shri Chunku Ram and Shri Budhi Ram were engaged in the years 1999, 2000 and 2001 respectively. Then, it is also evident from Ex.RW1/C that the services of Smt. Bhag Dei and Smt. Ram Dei were engaged in the years 2001 and 2003. At the cost of reiteration, I will like to add that the month and year of initial appointment of the petitioner as per Ex.RW1/B is June, 1998. There is nothing on record to show that the above named workers were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'.

Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G of the Act.

23. Faced with the situation, it was contended for the respondent that junior workers had been re-engaged and retained in service as per the orders of Labour Court-*cum*-Industrial Tribunal. No doubt, a note has been given in Ex. RW1/C and also Ex.Px that the above named workers had been re-engaged as per the orders of Labour Court-*cum*-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged does not defeat the claim of petitioner that they were junior to him. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Section 25-G of the Act, which as discussed above have been violated. (Please see **State of Himachal Pradesh & Anr.** *Vs***. Shri Partap Singh, 2017 (1) Him L.R. 286).**

24. However, the petitioner's allegation that the respondent had violated the provisions of Section 25-H of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit Ex.PW1/A, as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh hands were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-H of the Act.

25. The learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

26. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram** vs. **State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

27. In case titled as **Assistant Engineer Rajasthan Development Corporation and another** vs. **Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble

Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer** vs**. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another** vs. **Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr.** vs. **Raj Kumar, 2019 (160) FLR 791,** the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 367 days as a non-skilled worker. His services, as per the reference were disengaged in October, 2003 and had raised the industrial dispute by issuance of demand notice after about twelve years *i.e.* demand notice was given on 26-10-2015. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

28. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues No. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent.

Issue No. 3 :

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and decided against the respondent.

Relief :

30. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority

and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of January, 2020.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-*Industrial*
Tribunal, Kangra at Dharamshala, H.P.

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 74 / 16 / NT तारीख पेशी : 20–08–2020

दविंदर सिंह पुत्र अमर सिंह पुत्र वेली राम, गांव व डाकघर गुरनबाड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0) : GPA तिलक राज पुत्र वीर सिंह, निवासी गुराला।

बनाम

1. हंस राज पुत्र, 2. प्रषोतम सिंह पुत्र, 3. बलदेव सिंह पुत्रान कश्मीर सिंह, 4. दिलवाग सिंह पुत्र, 5. हंस राज उप–नाम हरबंस सिंह पुत्र, 6. कृष्णा देवी पुत्री, 7. पूर्णा देवी पुत्री, 8. चैंचला देवी पुत्रियां व 9. चिड़ी देवी पत्नी स्व0 श्री बाबू राम, 10, दविंदर कुमार पुत्र, 11. नरेन्दर कुमार पुत्र, 12. अनिल कुमार पुत्र, 13. शकुन्तला देवी पत्नी स्व0 श्री प्रकाश चन्द, 14. सुदेश कुमार पुत्र, 15. सुरिन्दर कुमार पुत्र, 16. रजिन्दर कुमार पुत्र, 17. व सुरेश वाला पुत्री, 18. सुदेश बाला पुत्री, 19. नरेश बाला पुत्रियां जगदीश राम, 20. विध्या देवी पत्नी स्व0 श्री मुंशी राम इसकी मृत्यु हो चुकी है वारसान घर से बाहर रहते हैं उनका पता मालूम नहीं है, 21. देव राज पुत्र रसीला राम, 22. नानक चन्द उप–नाम दौलत राम पुत्र रसीला राम, 23. बलदेव सिंह पुत्र रसीला राम समस्त वासीगण महाल भनेड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

विषय.–– प्रार्थना–पत्र बराये भूमि तकसीम।

यह कि अराजी खाता नं0 64, खतौनी नं0 103, खसरा कित्ता 8, रकबा तदादी 0–70–32 हैक्ट0 वाक्या महाल भनेड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0) अनुसार जमाबन्दी 2011–2012.

नोटिस बनाम.––1. हंस राज पुत्र कश्मीर सिंह, 2. दिलवाग सिंह पुत्र, 3. हंस राज उप–नाम हरबंस सिंह पुत्र, 4. व कृष्णा देवी पुत्री, 5. पूर्णा देवी पुत्री, 6. चैंचला देवी पुत्रियां बाबू राम, 7. दविंदर कुमार पुत्र, 8. नरेन्दर कुमार पुत्र, 9. अनिल कुमार पुत्र, 10. शकुन्तला देवी पत्नी स्व0 श्री प्रकाश चन्द, 11. सुदेश कुमार पुत्र, 12. सुरिन्दर कुमार पुत्र, 13. नरेन्दर कुमार पुत्र, 14. रजिन्दर कुमार पुत्र, 15. व सुरेश बाला पुत्री, 16. सुदेश बाला पुत्री, 17. नरेश बाला पुत्रियां जगदीश राम, 20. विध्या देवी पत्नी स्व0 श्री मुंशी राम इसकी मृत्यु हो चुकी है।

आपको इस इश्तहार द्वारा सूचित किया जाता है कि उपरोक्त खाता जात की तकसीम कार्यालय में विचाराधीन है जिसमें आप हिस्सेदार हैं। जिस बारे आपको कई बार हाजिर होने बारे अदालत हजा द्वारा सूचित किया गया था। परन्तु आप हाजिर अदालत न आये व समन लेने से इन्कार किया। अतः अब अदालत को यकीन हो चुका है कि उक्त प्रतिवादियों की समन तामील साधारण तरीके से होना कठिन है। अतः अब आपको अन्तिम अवसर प्रदान करते हुए बजरिया इश्तहार / मुस्त्री मुनादी द्वारा सूचित किया जाता है कि आप दिनांक 20–08–2020 को असालतन व वकालतन हाजिर होकर उपरोक्त मुकद्दमा की पैरवी करें। हाजिर न होने की सूरत में आपके विरूद्ध एकपक्षीय कार्यवाही अमल में लाई जाएगी। उसके उपरान्त कोई उजर / एतराज काबिले समायत न होगा और उपरोक्त खाता जात की तकसीम कर दी जाएगी।

आज दिनांक 17–07–2020 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 04 / 20 / NT तारीख पेशी : 20–08–2020

दविंदर सिंह पुत्र अमर सिंह पुत्र वेली राम, गांव व डाकघर गुरनबाड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

बनाम

1. राम कृष्ण पुत्र हरी चरण, 2. जैसी राम पुत्र हरी चरण, 3. रतन चन्द पुत्र हरी चरण, 4. ठाकरी देवी पुत्री हरी चरण, 5. दुनी चन्द पुत्र वृज लाल, 6. राजिन्द्र प्रशाद पुत्र दौलत राम, 7. देव प्रशाद पुत्र दौलत राम, 8. अतुल पुत्र दौलत राम, 9. उपमा पुत्री राम प्रशाद, 10. सुमति पुत्री राम प्रशाद, 11. वंदना पुत्री राम प्रशाद, 12. प्रियंका पुत्री राम प्रशाद, 13. स्वर्ण लता पत्नी स्व0 श्री राम प्रशाद, समस्त वासीगण गांव व डाकघर डाडा सीबा, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

विषय.–– प्रार्थना–पत्र बराये भूमि तकसीम।

यह कि अराजी खाता नं0 162, खतौनी नं0 227, खसरा नं0 259, 260, कित्ता 2, रकबा तदादी 00–22–23 हैक्ट0 वाक्या महाल डाडा सीबा, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0) अनुसार जमाबन्दी 2014–2015.

नोटिस बनाम.––1. राम कृष्ण पुत्र हरी चरण, 2. जैसी राम पुत्र हरी चरण, 3. रतन चन्द पुत्र हरी चरण, 4. ठाकरी देवी पुत्री हरी चरण, 5. दुनी चन्द पुत्र वृज लाल, 6. राजिन्द्र प्रशाद पुत्र दौलत राम, 7. देव प्रशाद पुत्र दौलत राम, 8. अतुल पुत्र दौलत राम, 9. उपमा पुत्री राम प्रशाद, 10. सुमति पुत्री राम प्रशाद, 11. वंदना पुत्री राम प्रशाद, 12. प्रियंका पुत्री राम प्रशाद, 13. स्वर्ण लता पत्नी स्व0 श्री राम प्रशाद।

आपको इस इश्तहार द्वारा सूचित किया जाता है कि उपरोक्त खाता जात की तकसीम कार्यालय में विचाराधीन है जिसमें आप हिस्सेदार हैं। जिस बारे आपको कई बार हाजिर होने बारे अदालत हजा द्वारा सूचित किया गया था। परन्तु आप हाजिर अदालत न आये व समन लेने से इन्कार किया। अतः अब अदालत को यकीन हो चुका है कि उक्त प्रतिवादियों की समन तामील साधारण तरीके से होना कठिन है। अतः अब आपको अन्तिम अवस प्रदान करते हुए बजरिया इश्तहार / मुस्त्री मुनादी द्वारा सूचित किया जाता है कि आप दिनांक 20–08–2020 को असालतन व वकालतन हाजिर होकर उपरोक्त मुकद्दमा की पैरवी करें। हाजिर न

होने की सूरत में आपके विरूद्ध एकपक्षीय कार्यवाही अमल में लाई जाएगी। उसके उपरान्त कोई उजर/एतराज काबिले समायत न होगा और उपरोक्त खाता जात की तकसीम कर दी जाएगी।

आज दिनांक 21–07–2020 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी हुआ।

मोहर। हस्ताक्षरित/–
सहायक समाहर्ता द्वितीय श्रेणी,
डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 75/16/NT तारीख पेशी : 20–08–2020

दविंदर सिंह पुत्र अमर सिंह पुत्र वेली राम, गांव व डाकघर गुरनबाड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0) : GPA तिलक राज पुत्र वीर सिंह, निवासी गुराला।

बनाम

1. दिलवाग सिंह पुत्र, 2. हंस राज उप–नाम हरबंस सिंह पुत्र, 3. कृष्णा देवी पुत्री, 4. पूर्णा देवी पुत्री, 5. चैंचला देवी पुत्रियां बाबू राम, 6. दविंदर कुमार पुत्र, 7. नरेन्दर कुमार पुत्र, 8. शकुन्तला देवी पत्नी स्व0 श्री प्रकाश चन्द, 9. सुदेश कुमार पुत्र, 10, नरेन्दर कुमार, 11. सुरिन्दर कुमार पुत्र, 12. रजिन्दर कुमार पुत्र, 13. सुरेश बाला पुत्री, 14. नरेश बाला पुत्रियां जगदीश राम, 15. विध्या देवी पत्नी स्व0 श्री मुंशी राम इसकी मृत्यु हो चुकी हैं वारसान घर से बाहर रहते है उनका पता मालूम नहीं है, 16. देव राज पुत्र रसीला राम, 17. नानक चन्द उप–नाम दौलत राम पुत्र रसीला राम, 18. बलदेव सिंह पुत्र रसीला राम समस्त वासीगण महाल भनेड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

विषय.–– प्रार्थना–पत्र बराये भूमि तकसीम।

यह कि अराजी खाता नं0 60, खतौनी नं0 97, ता 98, खसरा कित्ता 8, रकबा तदादी 1–12–48 हैक्ट0 वाक्या महाल भनेड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0) अनुसार जमाबन्दी 2011–2012.

नोटिस बनाम.––1. दिलवाग सिंह पुत्र, 2. हंस राज उप–नाम हरबंस सिंह पुत्र, 3. कृष्णा देवी पुत्री, 4. पूर्णा देवी पुत्री, 5. चैंचला देवी पुत्रियां बाबू राम, 6. दविंदर कुमार पुत्र, 7. नरेन्दर कुमार पुत्र, 8. शकुन्तला देवी पत्नी स्व0 श्री प्रकाश चन्द, 9. सुदेश कुमार पुत्र, 10, नरेन्दर कुमार, 11. सुरिन्दर कुमार पुत्र, 12. रजिन्दर कुमार पुत्र, 13. व सुरेश बाला पुत्री, 14. नरेश बाला पुत्रियां जगदीश राम, 15. विध्या देवी पत्नी स्व0 श्री मुंशी राम इसकी मृत्यु हो चुकी है वारसान घर से बाहर रहते हैं उनका पता मालूम नहीं है।

आपको इस इश्तहार द्वारा सूचित किया जाता है कि उपरोक्त खाता जात की तकसीम कार्यालय में विचाराधीन है जिसमें आप हिस्सेदार हैं। जिस बारे आपको कई बार हाजिर होने बारे अदालत हजा द्वारा सुचित किया गया था। परन्तु आप हाजिर अदालत न आये व समन लेने से इन्कार किया। अतः अब अदालत को यकीन हो चुका है कि उक्त प्रतिवादियों की समन तामील साधारण तरीके से होना कठिन है। अतः अब आपको अन्तिम अवसर प्रदान करते हुए बजरिया इश्तहार/मुस्त्री मुनादी द्वारा सूचित किया जाता है कि आप दिनांक 20–08–2020 को असालतन व वकालतन हाजिर होकर उपरोक्त मुकद्दमा की पैरवी करें। हाजिर न होने की सूरत में आपके विरूद्ध एकपक्षीय कार्यवाही अमल में लाई जाएगी। उसके उपरान्त कोई उजर/एतराज काबिले समायत न होगा और उपरोक्त खाता जात की तकसीम कर दी जाएगी।

आज दिनांक 17–07–2020 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 76 / 16 / NT तारीख पेशी : 20–08–2020

दविंदर सिंह पुत्र अमर सिंह पुत्र वेली राम, गांव व डाकघर गुरनबाड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0) : GPA तिलक राज पुत्र वीर सिंह, निवासी गुराला।

बनाम

1. हंस राज पुत्र, 2. प्रषोतम सिंह पुत्र, 3. बलदेव सिंह पुत्रान कश्मीर सिंह, 4. शेर सिंह पुत्र भण्डारी, 5. दिलवाग सिंह पुत्र, 6. हंस राज उप–नाम हरबंस सिंह पुत्र, 7. कृष्णा देवी पुत्री, 8. पूर्णा देवी पुत्री, 9. चैंचला देवी पुत्रियां व, 10. चिड़ी देवी पत्नी स्व0 श्री बाबू राम, 11. सुदेश कुमार पुत्र, 12. नरेन्दर कुमार पुत्र, 13. सुरिन्दर कुमार पुत्र, 14 रजिन्दर कुमार पुत्र, 15. विरेन्दर कुमार पुत्र, 16. व सुदेश वाला पुत्री, 17. नरेश बाला पुत्रियां जगदीश राम, 18. विध्या देवी पत्नी स्व0 श्री मुंशी राम इसकी मृत्यु हो चुकी है वारसान घर से बाहर रहते हैं उनका पता मालूम न है, 19. देव राज पुत्र रसीला राम, 20. नानक चन्द उप–नाम दौलत राम पुत्र रसीला राम, 21. बलदेव सिंह पुत्र रसीला राम समसत वासीगण महाल भनेड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

विषय.–– प्रार्थना–पत्र बराये भूमि तकसीम।

यह कि अराजी खाता नं0 62, खतौनी नं0 101, खसरा कित्ता 4, रकबा तदादी 0–18–18 हैक्ट0 वाक्या महाल भनेड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0) अनुसार जमाबन्दी 2011–2012.

नोटिस बनाम.––1. हंस राज पुत्र, 2. प्रषोतम सिंह पुत्र, 3. बलदेव सिंह पुत्रान कश्मीर सिंह, 4. शेर सिंह पुत्र भण्डारी, 5. दिलवाग सिंह पुत्र, 6. हंस राज उप–नाम हरबंस सिंह पुत्र, 7. कृष्णा देवी पुत्री, 8. पूर्णा देवी पुत्री, 9. चैंचला देवी पुत्रियां व, 10. चिड़ी देवी पत्नी स्व0 श्री बाबू राम, 11, सुदेश कुमार पुत्र, 12. नरेन्दर कुमार पुत्र, 13. सुरिन्दर कुमार पुत्र, 14 रजिन्दर कुमार पुत्र, 15. विरेन्दर कुमार पुत्र, 16. व सुदेश वाला पुत्री, 17. नरेश बाला पुत्रियां जगदीश राम, 18 नानक चन्द उप–नाम दौलत राम पुत्र रसीला राम।

आपको इस इश्तहार द्वारा सूचित किया जाता है कि उपरोक्त खाता जात की तकसीम कार्यालय में विचाराधीन है जिसमें आप हिस्सेदार हैं। जिस बारे आपको कई बार हाजिर होने बारे अदालत हजा द्वारा सूचित किया गया था। परन्तु आप हाजिर अदालत न आये व समन लेने से इन्कार किया। अतः अब अदालत को यकीन हो चुका है कि उक्त प्रतिवादियों की समन तामील साधारण तरीके से होना कठिन है। अतः अब आपको अन्तिम अवसर प्रदान करते हुए बजरिया इश्तहार / मुस्त्री मुनादी द्वारा सूचित किया जाता है कि आप दिनांक 20–08–2020 को असालतन व वकालतन हाजिर होकर उपरोक्त मुकद्दमा की पैरवी करें। हाजिर न होने की सूरत में आपके विरूद्ध एकपक्षीय कार्यवाही अमल में लाई जाएगी। उसके उपरान्त कोई उजर / एतराज काबिले समायत न होगा और उपरोक्त खाता जात की तकसीम कर दी जाएगी।

आज दिनांक 17–07–2020 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 77/16/NT तारीख पेशी : 20–08–2020

दविंदर सिंह पुत्र अमर सिंह पुत्र वेली राम, गांव व डाकघर गुरनबाड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0) : GPA तिलक राज पुत्र वीर सिंह, निवासी गुराला।

बनाम

1. सरस्वती देवी पुत्री, 2. रत्नी देवी पुत्री, 3. भूरी देवी पत्नी स्व0 श्री कर्म सिंह, 4. दिलवाग सिंह पुत्र, 5. हंस राज उप–नाम हरबंस सिंह पुत्र, 6. कृष्णा देवी पुत्री, 7. पूर्णा देवी पुत्री, 8. चैंचला देवी पुत्रियां, 9. चिड़ी देवी पत्नी स्व0 श्री बाबू राम, 10. दविंदर कुमार पुत्र, 11. नरेन्दर कुमार पुत्र, 12. शकुन्तला देवी पत्नी स्व0 श्री प्रकाश चन्द, 13. सुदेश कुमार पुत्र, 14. सुरिन्दर कुमार पुत्र, 15. नरेन्दर कुमार पुत्र, 16. रजिन्दर कुमार पुत्र, 17. सुदेश बाला पुत्री जगदीश राम, 18. विध्या देवी पत्नी स्व0 श्री मुंशी राम इसकी मृत्यु हो चुकी है, 19. देव राज पुत्र रसीला राम, 20. नानक चन्द उप–नाम दौलत राम पुत्र रसीला राम, 21. बलदेव सिंह पुत्र रसीला राम, समस्त वासीगण महाल भनेड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

विषय.–– प्रार्थना–पत्र बराये भूमि तकसीम।

यह कि अराजी खाता नं0 61, खतौनी नं0 99, ता 100, खसरा कित्ता 6, रकबा तदादी 0–31–39 हैक्ट0 वाक्या महाल भनेड, तहसील डाडा सीबा, जिला कांगड़ा (हि0 प्र0) अनुसार जमाबन्दी 2011–2012.

नोटिस बनाम.––1. सरस्वती देवी पुत्री, 2. रत्नी देवी पुत्री, 3. भूरी देवी पत्नी स्व0 श्री कर्म सिंह, 4. दिलवाग सिंह पुत्र, 5. हंस राज उप–नाम हरबंस सिंह पुत्र, 6. कृष्णा देवी पुत्री, 7. पूर्णा देवी पुत्री, 8. चैंचला देवी पुत्रियां व 9. चिड़ी देवी पत्नी स्व0 श्री बाबू राम, 10. दविंदर कुमार पुत्र, 11. नरेन्दर कुमार पुत्र, 12. शकुन्तला देवी पत्नी स्व0 श्री प्रकाश चन्द, 13. सुदेश कुमार पुत्र, 14. सुरिन्दर कुमार पुत्र, 15. नरेन्दर कुमार पुत्र, 16. रजिन्दर कुमार पुत्र, 17. सुदेश बाला पुत्री जगदीश राम।

आपको इस इश्तहार द्वारा सूचित किया जाता है कि उपरोक्त खाता जात की तकसीम कार्यालय में विचाराधीन है जिसमें आप हिस्सेदार हैं। जिस बारे आपको कई बार हाजिर होने बारे अदालत हजा द्वारा सूचित किया गया था। परन्तु आप हाजिर अदालत न आये व समन लेने से इन्कार किया। अतः अब अदालत को यकीन हो चुका है कि उक्त प्रतिवादियों की समन तामील साधारण तरीके से होना कठिन है। अतः अब आपको अन्तिम अवस प्रदान करते हुए बजरिया इश्तहार/मुस्त्री मुनादी द्वारा सूचित किया जाता है कि आप दिनांक 20–08–2020 को असालतन व वकालतन हाजिर होकर उपरोक्त मुकद्दमा की पैरवी करें। हाजिर न होने की सूरत में आपके विरूद्ध एकपक्षीय कार्यवाही अमल में लाई जाएगी। उसके उपरान्त कोई उजर/एतराज काबिले समायत न होगा और उपरोक्त खाता जात की तकसीम कर दी जाएगी।

आज दिनांक 17–07–2020 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी हुआ।

मोहर। हस्ताक्षरित/–
सहायक समाहर्ता द्वितीय श्रेणी,
डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता प्रथम श्रेणी एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला, जिला कांगड़ा (हि0प्र0)

मुकद्दमा नं0 /20

Sh. Tenzin Phuntsok

Versus

MCD Dharamshala

आम जनता

विषय.––प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

Sh. Tenzin Phuntsok s/o Sh. Tsultrim Tenzin, r/o V.P.O. Dharamshala, Tehsil Dharamshala, District Kangra (H.P.) ने इस अदालत में शपथ–पत्र सहित मुकद्दमा दायर किया है कि उसका जन्म दिनांक 25–08–1978 को हुआ है परन्तु एम0सी0डी0 Dharamshala / ग्राम पंचायत में जन्म पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को Tenzin Phuntsok का जन्म पंजीकृत किये जाने बारे कोई एतराज हो तो वह हमारी अदालत में दिनांक 20–08–2020 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ–पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 18–07–2020 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
धर्मशाला, जिला कांगड़ा (हि0प्र0)।

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 03 / T / 2020 / Misc. तारीख पेशी : 20–08–2020

श्री प्रताप चन्द पुत्र श्री चन्दू लाल, निवासी गांव चौकी, डाकघर टिहरी, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)।

बनाम

आम जनता

उनवान मुकद्दमा.–– नाम दुरुस्ती।

श्री प्रताप चन्द पुत्र श्री चन्दू लाल, निवासी गांव चौकी, डाकघर टिहरी, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0) ने स्वयं उपस्थित होकर प्रार्थना–पत्र प्रस्तुत किया कि मेरा नाम महाल चौकी, डाकघर टिहरी, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0) के राजस्व अभिलेख में पटवार वृत्त टिहरी के महाल चौकी में प्रताप सिंह पुत्र श्री चन्दू लाल दर्ज है, जबकि आधार कार्ड व पैन कार्ड व ग्राम पंचायत टिहरी के अभिलेख व स्कूल प्रमाण–पत्र में मेरा नाम प्रताप चन्द दर्ज है। अतः राजस्व अभिलेख पटवार वृत्त टिहरी के महाल चौकी में मेरा नाम प्रताप सिंह उपनाम प्रताप चन्द दुरुस्त दर्ज किया जाये। वास्तव में भिन्न–भिन्न नामों का मैं एक ही व्यक्ति हूं।

अतः सर्वसाधारण को सुनवाई हेतु वजरिया इश्तहार व मुस्त्री मुनादी द्वारा सूचित किया जाता है कि इस सम्बन्ध में किसी प्रकार का उजर/एतराज हो तो वह दिनांक 20–08–2020 को असालतन व वकालतन पेश होकर अपना एतराज दर्ज करवा सकता है। उसके उपरान्त कोई भी उजर/एतराज जेरै समायत ना होगा तथा प्रताप चन्द पुत्र श्री चन्दू लाल, निवासी गांव चौकी, डाकघर टिहरी, तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0) का नाम राजस्व अभिलेख पटवार वृत्त टिहरी के महाल चौकी में प्रताप सिंह के बजाये उप–नाम प्रताप चन्द दुरुस्त दर्ज करने के आदेश पारित कर दिये जायेंगे।

आज दिनांक 24–07–2020 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर। हस्ताक्षरित/–,
सहायक समाहर्ता प्रथम श्रेणी,
तहसील खुण्डियां, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत कुमारी मेघना गोस्वामी एवं सहायक समाहर्ता, प्रथम श्रेणी, तहसील, धीरा, जिला कांगड़ा (हि0 प्र0)

केस नं0 : 19/2020 तारीख दायराः 13–07–2020 तारीख पेशी : 21–08–2020

श्री रोशन लाल पुत्र रूप सिंह, निवासी महाल ओलेहड़, मौजा धीरा, तहसील धीरा, जिला कांगड़ा (हि0 प्र0) ..प्रार्थी।

बनाम

आम जनता ..प्रत्यार्थीगण।

विषय.––बराये नाम दुरुस्ती भू–राजस्व अधिनियम, एक्ट 1954 की धारा 37(3) के अन्तर्गत।

प्रार्थी उपरोक्त ने इस अदालत में प्रार्थना–पत्र मय शपथ–पत्र इस अशय से पेश किया है कि उनका सही नाम रोशन लाल पुत्र रूप सिंह है जबकि महाल ओलेहड़, मौजा धीरा, तहसील धीरा, जिला कांगड़ा (हि0 प्र0) के राजस्व अभिलेख में अशोक कुमार पुत्र रूप सिंह दर्शाया गया है। जो कि गलत है। अतः महाल ओलेहड़, मौजा धीरा, तहसील धीरा, जिला कांगड़ा (हि0 प्र0) के राजस्व अभिलेख में उसका नाम दुरुस्त किया जाये।

अतः इस बारे राजपत्र इश्तहार/मुस्त्री मुनादी द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी को उक्त नाम की दुरुस्ती बारे कोई उजर या एतराज हो तो वह दिनांक 21–08–2020 को प्रातः 10.30 बजे असालतन या वकालतन हाजिर अदालत आकर उजर व एतराज पेश कर सकता है। इसके उपरान्त कोई भी उजर या एतराज काबिले समायत न होगा तथा नियमानुसार उक्त नाम की दुरुस्ती के आदेश पारित कर दिये जायेंगे।

आज दिनांक 21–07–2020 को हमारे हस्ताक्षर व मोहर सहित अदालत से जारी किया गया।

मोहर। हस्ताक्षरित/–
सहायक समाहर्ता प्रथम श्रेणी,
तहसील धीरा, जिला कांगड़ा (हि0 प्र0)।

ब अदालत श्री विजय कुमार राय, तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग, ऊना, जिला ऊना (हि0 प्र0)

मुक्द्दमा : इन्द्राज सेहत नाम। पेशी : 22–08–2020

दावा संख्या नं0...../ Teh. Una/M. Reg./2020

बलविन्द्र सिंह पुत्र श्री वलदेव राज, वासी वरनोह, तहसील व जिला ऊना (हि0 प्र0) ..प्रार्थी।

बनाम

आम जनता

विषय.––दुरुस्ती नाम हि0 प्र0 रा0 अधिनियम, 1954 की जेर धारा 37 के तहत उप–महाल लमलैहडी निचली में नाम दुरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना–पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम बलविन्द्र सिंह है जबकि उप–महाल लमलैहडी निचली के राजस्व अभिलेख में उसका नाम वलविन्द्र सिंह पुत्र श्री वलदेव राज दर्ज है जोकि गलत इन्द्राज हुआ है। प्रार्थी उक्त नाम को दुरुस्त करके वलविन्द्र उपनाम बलविन्द्र सिंह पुत्र श्री वलदेव राज दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना–पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे किसी को कोई उजर या एतराज हो तो वह असालतन या वकालतन इस न्यायालय में दिनांक 22–08–2020 को सुबह 10.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिये जाएंगे। इसके बाद कोई भी उजर या एतराज काबिले समायत न होगा।

आज दिनांक 23–07–2020 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

विजय कुमार राय,
तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग,
ऊना, जिला ऊना (हि0 प्र0)।

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ब अदालत श्री विजय कुमार राय, तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग, ऊना, जिला ऊना (हि0 प्र0)

मुकद्दमा : इन्द्राज सेहत नाम। पेशी : 22–08–2020

दावा संख्या नं0...../ Teh. Una/M. Reg./2020

बलविन्द्र सिंह पुत्र श्री वलदेव राज, वासी बरनोह, तहसील व जिला ऊना (हि0 प्र0) ..प्रार्थी।

बनाम

आम जनता

विषय.––दुरुस्ती नाम हि0 प्र0 रा0 अधिनियम, 1954 की जेर धारा 37 के तहत महाल बरनोह में नाम दुरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना–पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम बलविन्द्र सिंह है जबकि उप–महाल बरनोह के राजस्व अभिलेख में उसका नाम वलविन्दर कुमार पुत्र श्री वलदेव राज दर्ज है जोकि गलत इन्द्राज हुआ है। प्रार्थी उक्त नाम को दरुस्त करके वलविन्दर कुमार उपनाम बलविन्द्र सिंह पुत्र श्री वलदेव राज दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना–पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे किसी को कोई उजर या एतराज हो तो वह असालतन या वकालतन इस न्यायालय में दिनांक 22–08–2020 को सुबह 10.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिये जाएंगे। इसके बाद कोई भी उजर या एतराज काबिले समायत न होगा।

आज दिनांक 23–07–2020 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

विजय कुमार राय,
तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग,
ऊना, जिला ऊना (हि0 प्र0)।

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ब अदालत श्री विजय कुमार राय, तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग, ऊना, जिला ऊना (हि0 प्र0)

मुकद्दमा : इन्द्राज सेहत नाम। पेशी : 21–08–2020

दावा संख्या नं0...../ Teh. Una/M. Reg./2020

शिव कुमार पुत्र श्री राम नाथ, वासी वार्ड नं0 8, मोहल्ला कतना, ऊना, तहसील व जिला ऊना (हि0 प्र0) ..प्रार्थी।

बनाम

आम जनता

विषय.––दुरुस्ती नाम हि0 प्र0 रा0 अधिनियम, 1954 की जेर धारा 37 के तहत महाल ऊना खास में नाम दुरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना–पत्र गुजारा है जिसमें लिखा है कि उसके पिता का सही नाम राम नाथ है जबकि महाल ऊना खास के राजस्व अभिलेख में उसके पिता का नाम वदरी नाथ पुत्र श्री दया राज दर्ज है जोकि गलत इन्द्राज हुआ है। प्रार्थी उक्त नाम को दुरुस्त करके वदरी नाथ उपनाम राम नाथ पुत्र दया राज दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना–पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे किसी को कोई उजर या एतराज हो तो वह असालतन या वकालतन इस न्यायालय में दिनांक 21–08–2020 को सुबह 10.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिये जाएंगे। इसके बाद कोई भी उजर या एतराज काबिले समायत न होगा।

आज दिनांक 22–07–2020 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

विजय कुमार राय,
तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग,
ऊना, जिला ऊना (हि0 प्र0)।

ब अदालत श्री विजय कुमार राय, तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग, ऊना, जिला ऊना (हि0 प्र0)

मुकद्दमा : इन्द्राज सेहत नाम। पेशी : 22–08–2020

दावा संख्या नं0...../Teh. Una/M. Reg./2020

ज्ञान सिंह रायजादा पुत्र श्री सन्त राम, वासी मलाहत, तहसील व जिला ऊना (हि0 प्र0) ..प्रार्थी।

बनाम

आम जनता

विषय.––दुरुस्ती नाम हि0 प्र0 रा0 अधिनियम, 1954 की जेर धारा 37 के तहत महाल मलाहत में नाम दुरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना–पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम ज्ञान सिंह रायजादा है जबकि महाल मलाहत के राजस्व अभिलेख में उसका नाम ज्ञान चन्द दर्ज है जोकि गलत इन्द्राज हुआ है। प्रार्थी उक्त नाम को दुरुस्त करके ज्ञान चन्द उपनाम ज्ञान सिंह रायजादा पुत्र सन्त राम दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना–पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे किसी को कोई उजर या एतराज हो तो वह असालतन या वकालतन इस न्यायालय में दिनांक 22–08–2020 को सुबह 10.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिये जाएंगे। इसके बाद कोई भी उजर या एतराज काबिले समायत न होगा।

आज दिनांक 23–07–2020 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर। विजय कुमार राय,
तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग,
ऊना, जिला ऊना (हि0 प्र0)।

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ब अदालत श्री विजय कुमार राय, तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग, ऊना, जिला ऊना (हि0 प्र0)

मुकद्दमा : इन्द्राज सेहत नाम। पेशी : 22–08–2020

दावा संख्या नं0...../Teh. Una/M. Reg./2020

बलविन्द्र सिंह पुत्र श्री वलदेव राज, वासी वरनोह, तहसील व जिला ऊना (हि0 प्र0) ..प्रार्थी।

बनाम

आम जनता

विषय.––दुरुस्ती नाम हि0 प्र0 रा0 अधिनियम, 1954 की जेर धारा 37 के तहत उप–महाल समूरकलां अव्वल में नाम दुरुस्ती बारे।

उपरोक्त मुकद्दमा बारे प्रार्थी ने इस न्यायालय में प्रार्थना–पत्र गुजारा है जिसमें लिखा है कि उसका सही नाम बलविन्द्र सिंह है जबकि उप–महाल समूरकलां अव्वल के राजस्व अभिलेख में उसका नाम वलविन्द्र दर्ज है जोकि गलत इन्द्राज हुआ है। प्रार्थी उक्त नाम को दरुस्त करके वलविन्द्र उपनाम बलविन्द्र सिंह पुत्र श्री वलदेव राज दर्ज करवाना चाहता है।

अतः उक्त प्रार्थना–पत्र के सन्दर्भ में उपरोक्त नाम की दुरुस्ती बारे किसी को कोई उजर या एतराज हो तो वह असालतन या वकालतन इस न्यायालय में दिनांक 22–08–2020 को सुबह 10.00 बजे हाजिर आ सकता है। हाजिर न आने की स्थिति में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिये जाएंगे। इसके बाद कोई भी उजर या एतराज काबिले समायत न होगा।

आज दिनांक 23–07–2020 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

विजय कुमार राय,
तहसीलदार एवं सहायक समाहर्ता प्रथम वर्ग,
ऊना, जिला ऊना (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी (नायब तहसील), हरोली, जिला ऊना (हि0 प्र0)

सुरेश कुमार पुत्र दिलदार सिंह, वासी वाथड़ी, तहसील हरोली, जिला ऊना (हि0प्र0)

श्रीमती परमजीत कौर पुत्री दर्शन लाल, वासी फतेहपुर कोटी, तहसील गढ़शंकर, जिला होशियारपुर (पंजाब)।

बनाम

आम जनता

आवेदन–पत्र अधीन धारा 8(4) of Marriage Act, 1996 & Rule 4(2) of 2004.

सुरेश कुमार पुत्र दिलदार सिंह, वासी वाथड़ी, तहसील हरोली, जिला ऊना (हि0प्र0) ने इस न्यायालय में निवेदन किया है कि उनकी शादी दिनांक 19–06–2019 को श्रीमती परमजीत कौर पुत्री दर्शन लाल, वासी फतेहपुर कोटी, तहसील गढ़शंकर, जिला होशियारपुर (पंजाब) के साथ हुई है। लेकिन उनकी शादी ग्राम पंचायत अभिलेख में दर्ज न है और शादी तिथि रजिस्ट्रेशन अधिनियम, 1969 के तहत सम्बन्धित अभिलेख में दर्ज करने बारे प्रार्थना–पत्र प्रस्तुत किया है।

अतः सर्वसाधारण को इश्तहार/नोटिस मुश्त्री मुनादी के माध्यम से सूचित किया जाता है कि इस बारे किसी व्यक्ति को कोई उजर/एतराज हो तो वह दिनांक 31–08–2020 को प्रातः 10.00 बजे अधोहस्ताक्षरी के न्यायालय में उपस्थित होकर उजर/एतराज पेश कर सकता है।

यदि उपरोक्त वर्णित तिथि को किसी भी व्यक्ति का कोई उजर या एतराज इस न्यायालय में प्राप्त नहीं होता है तो इस न्यायालय द्वारा यह मान लिया जाएगा कि किसी को इस सम्बन्ध में कोई आपत्ति न है और शादी तिथि सम्बन्धित रिकार्ड में दर्ज करने बारे नियमानुसार आगामी कार्यवाही अमल में लाई जाकर आदेश पारित कर दिया जाएगा।

आज दिनांक 30–07–2020 को मेरे हस्ताक्षर व मोहर न्यायालय से जारी हुआ।

मोहर।

हस्ताक्षरित/–
कार्यकारी दण्डाधिकारी,
(ना0 तह0) हरोली, जिला ऊना (हि0प्र0)।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है